|  |  |  |  |
| --- | --- | --- | --- |
| NPRR Number | [1252](https://www.ercot.com/mktrules/issues/NPRR1252) | NPRR Title | Pre-notice for Sharing of Some Information, Addition of Research and Innovation Partner, Clarifying Notice Requirements |
| Date Posted | | November 8, 2024 | |
|  | |  | |
| Sponsor | | | |
| Name | | Katherine Gross / Doug Fohn / Venkata Tirupati | |
| E-mail Address | | [Katherine.Gross@ercot.com](mailto:Katherine.Gross@ercot.com/) / [Doug.Fohn@ercot.com](mailto:Doug.Fohn@ercot.com) / [Venkata.Tirupati@ercot.com](mailto:Venkata.Tirupati@ercot.com) | |
| Company | | ERCOT | |
| Phone Number | | 512-225-7184 / 512-275-7447 / 512-248-6641 | |
| Cell Number | |  | |
| Market Segment | | Not applicable | |

|  |
| --- |
| Comments |

ERCOT offers these revisions to further address its intent with providing notice using a Market Notice. For the vast majority of Protocol-related issues, ERCOT will continue to provide notice through the Authorized Representative and Backup Authorized Representative (and any persons also required to receive notice under the specific Protocol section). However, in rare cases, there may be more efficiency in providing notice through a Market Notice. In that limited case, providing notice of the upcoming disclosure is done more efficiently through an ERCOT Market Notice, rather than emailing or mailing all Authorized Representatives and Backup Authorized Representatives.

ERCOT’s proposed changes now more clearly reflect that ERCOT’s intent regarding this portion of the NPRR is that Market Participants be obligated to subscribe to any public distribution lists for Market Notices that are relevant to each individual Market Participant’s operations or obligations, and that notice by Market Notice be considered received when the Market Notice is sent (unless sent after 5:00 p.m., in which case it is considered received the next day). Under this proposal, if ERCOT must provide notice using a Market Notice for efficiency reasons, notice will be complete so long as ERCOT provides the Market Notice to the proper public distribution lists.

Additionally, ERCOT has proposed changes based on Stakeholder feedback. Under additional proposed changes, ERCOT would not be required to provide notice prior to disclosure of Protected Information and ERCOT Critical Energy Infrastructure Information (ECEII) to an ERCOT Research and Innovation (R&I) Partner, but may instead satisfy its notice obligations by posting and maintaining on the ERCOT website a list of categories of information disclosed to the R&I Partners. This replaces ERCOT’s original proposal, which required traditional notice for disclosure of Protected Information to an R&I Partner and no notice of disclosure of ECEII to an R&I Partner. ERCOT anticipates that the majority of information shared with R&I Partners will be ECEII as most information that would otherwise be Protected Information can be anonymized and aggregated to remove its Protected Information status.

|  |
| --- |
| **Market Rules Notes** |

Please note that the following NPRR(s) also propose revisions to the following section(s):

* NPRR1243, Revision to Requirements for Notice and Release of Protected Information or ECEII to Certain Governmental Authorities
* Section 1.3.5
* Section 1.3.6

|  |
| --- |
| Revised Cover Page Language |

None

|  |
| --- |
| Revised Proposed Protocol Language |

1.3.5 Notice Before Permitted Disclosure

(1) Before making any disclosure under Section 1.3.6, Exceptions, the Receiving Party shall promptly notify the Disclosing Party in writing and, with the exception of information disclosed pursuant to paragraph (3) of Section 1.3.6, shall assert confidentiality and take reasonable steps to cooperate with the Disclosing Party in seeking to protect the Protected Information or ECEII from disclosure by confidentiality agreement, protective order, aggregation of information, or other reasonable measures. Notwithstanding the foregoing, ERCOT is not required to provide notice to the Disclosing Party of disclosures made under items (1)(b), (1)(h), (1)(n), or (1)(p) of Section 1.3.6. Further, notwithstanding the foregoing, a Receiving Party is not required to provide notice to the Disclosing Party of disclosures made under item (1)(i) of Section 1.3.6.

(2) If the Disclosing Party is not also the Creating Party, upon receipt of the notice required by paragraph (1) above, the Disclosing Party shall promptly notify the Creating Party, unless, after making reasonable efforts, the Disclosing Party is unable to identify the Creating Party.

(3) Notwithstanding any other provision in these Protocols, for disclosures under paragraphs (1)(j) and (1)(k) of Section 1.3.6, ERCOT may satisfy its notice obligations by posting and maintaining on the ERCOT website a list of such categories in lieu of individually notifying each Disclosing Party. When providing notice under this paragraph, ERCOT shall add the disclosed information to the posted list promptly after the disclosure.

1.3.6 Exceptions

(1) The Receiving Party or Creating Party may, without violating Section 1.3, Confidentiality, disclose Protected Information or ECEII:

(a) To governmental officials, Market Participants, the public, or others as required by any law, regulation, or order, or by these Protocols, but any Receiving Party or Creating Party must make reasonable efforts to restrict public access to the disclosed Protected Information or ECEII by protective order, by aggregating information, or otherwise if reasonably possible; or

(b) If ERCOT is the Receiving Party or Creating Party and disclosure to the PUCT, Reliability Monitor or IMM of the Protected Information or ECEII is required by ERCOT pursuant to applicable Protocol, law, regulation, or order; or

(c) For Protected Information, if the Disclosing Party has given its prior written consent to the disclosure, which consent may be given or withheld in Disclosing Party’s sole discretion; or

(d) For Protected Information, if the Protected Information, before it is furnished to the Receiving Party, has been disclosed to the public through lawful means; or

(e) For Protected Information, if the Protected Information, after it is furnished to the Receiving Party, is disclosed to the public other than as a result of a breach by the Receiving Party of its obligations under Section 1.3; or

(f) If reasonably deemed by the disclosing Receiving Party to be required to be disclosed in connection with a dispute between the Receiving Party and the Disclosing Party, but the disclosing Receiving Party must make reasonable efforts to restrict public access to the disclosed Protected Information or ECEII by protective order, by aggregating information, or otherwise if reasonably possible; or

(g) To a TSP or DSP engaged in the ERCOT Transmission Grid or Distribution System planning and operating activities, provided that the TSP or DSP has executed a confidentiality agreement with ERCOT with requirements substantially similar to those in Section 1.3. ERCOT shall post on the ERCOT website a list of all TSPs and DSPs that have confidentiality agreements in effect with ERCOT; or

(h) For Protected Information, to a vendor or prospective vendor of goods and services to ERCOT or a TDSP, so long as such vendor or prospective vendor:

(i) Is not a Market Participant, except that ERCOT or the TDSP may disclose Protected Information to a vendor or prospective vendor that is registered solely as an Independent Market Information System Registered Entity (IMRE) to the extent appropriate for the vendor to carry out its responsibilities in such capacity or for the prospective vendor to engage in commercial discussions; and

(ii) Has executed a confidentiality agreement with requirements at least as restrictive as those in Section 1.3; or

(i) For ECEII, to a vendor or prospective vendor of goods and services, so long as such vendor or prospective vendor has executed a confidentiality agreement with requirements at least as restrictive as those in Section 1.3; or

(j) For Protected Information, to an ERCOT Research and Innovation (R&I) Partner that has agreed to perform ERCOT Research and Innovation for ERCOT, so long as the ERCOT R&I Partner:

(i) Is not a Market Participant, except that ERCOT may disclose Protected Information to an ERCOT R&I Partner that is registered solely as an Independent Market Information System Registered Entity (IMRE) to the extent appropriate for the ERCOT R&I Partner to carry out its responsibilities in such capacity; and

(ii) Has executed a confidentiality agreement with requirements at least as restrictive as those in Section 1.3; or

(k) For ECEII, to an ERCOT R&I Partner that has agreed to perform ERCOT Research and Innovation for ERCOT, so long as such ERCOT R&I Partner has executed a confidentiality agreement with requirements at least as restrictive as those in Section 1.3; or

(l) To the North American Electric Reliability Corporation (NERC) or the NERC Regional Entity if required for compliance with any applicable NERC or NERC Regional Entity requirement, but any Receiving Party or Creating Party must make reasonable efforts to restrict public access to the disclosed Protected Information or ECEII as reasonably possible; or

(m) To ERCOT and its consultants, the IMM, the Reliability Monitor, and members of task forces and working groups of ERCOT, if engaged in performing analysis of abnormal system conditions, disturbances, unusual events, and abnormal system performance, or engaged in tasks involving ECEII for support of the ERCOT Transmission Grid. Notwithstanding the foregoing sentence, task forces and working groups may not receive Ancillary Service Offer prices or other competitively sensitive price or cost information before expiration of its status as Protected Information, and each member of a task force or working group shall execute a confidentiality agreement with requirements substantially similar to those in Section 1.3, prior to receiving any Protected Information or ECEII. Data to be disclosed under this exception to task forces and working groups must be limited to clearly defined periods surrounding the relevant conditions, events, or performance under review and must be limited in scope to information pertinent to the condition or events under review and may include the following:

(i) QSE Ancillary Service awards and deployments, in aggregate and by type of Resource;

(ii) Resource facility availability status, including the status of switching devices, auxiliary loads, and mechanical systems that had a material impact on Resource facility availability or an adverse impact on the transmission system operation;

(iii) Individual Resource information including Base Points, maximum/minimum generating capability, droop setting, real power output, and reactive output;

(iv) Resource protective device settings and status;

(v) Data from COPs;

(vi) Resource Outage schedule information; and

(vii) BSS test results and ERCOT’s Black Start plan, including individual Black Start Resource start-up procedures, cranking paths, and individual TSP Black Start plans;

(n) To the CFTC if requested from ERCOT by the CFTC as part of an investigation or regulatory inquiry authorized pursuant to the Commodity Exchange Act and the CFTC’s regulations or if required to be submitted to the CFTC pursuant to any other law, provided that ERCOT, as the Receiving Party or Creating Party, must timely submit a written request for confidential treatment in accordance with the CFTC’s regulations or other applicable law;

(o) To a Governmental Cybersecurity Oversight Agency regarding a Cybersecurity Incident, if ERCOT is the Receiving Party, and disclosure of Protected Information is made to a Governmental Cybersecurity Oversight Agency or delegated entity for the purpose of ensuring the safety and/or security of the ERCOT System or ERCOT’s ability to perform the functions of an independent organization under PURA; or

(p) Incidentally as part of a tour of the ERCOT control room provided to persons determined by ERCOT to be eligible to participate in the tour. Prior to accessing the ERCOT control room, such persons must sign a nondisclosure agreement required by ERCOT and comply with the screening and other requirements provided in a policy adopted by ERCOT security. The policy will include a prohibition against taking photographs or recordings of Protected Information or ECEII. This subsection does not apply to a person who is a director, officer, employee, agent, representative, contractor, or consultant of a Market Participant that is registered with ERCOT as one or more of the following registration types: Resource Entity, QSE, LSE, or CRR Account Holder.

(2) Protected Information may not be disclosed to other Market Participants prior to ten days following the Operating Day under review, except as permitted in paragraph (1)(n) above.

(3) ERCOT may disclose, and may authorize a Receiving Party or Creating Party to disclose, ECEII to the public or to any person under the provisions of this paragraph, except for ECEII otherwise protected from disclosure pursuant to law, regulation, or order.

(a) ERCOT may propose to disclose ECEII that is not otherwise protected from disclosure pursuant to law, regulation, or order. Any Receiving Party or Creating Party other than ERCOT may request ERCOT authorization to disclose such ECEII.

(i) ERCOT may propose to disclose ECEII that is not otherwise protected from disclosure pursuant to law, regulation, or order if it determines that the public benefit of the proposed disclosure of ECEII outweighs the potential harm resulting from the disclosure. ERCOT shall issue a Market Notice regarding ERCOT’s intent to disclose the ECEII, subject to objection as further provided in paragraph (c) below.

(ii) A request by a Receiving Party or Creating Party other than ERCOT for authorization to disclose ECEII shall be submitted by e-mail to ERCOT’s General Counsel. If the ECEII is not otherwise protected from disclosure pursuant to law, regulation, or order, and ERCOT determines that the public benefit of the proposed disclosure of ECEII outweighs the potential harm resulting from the disclosure, ERCOT shall issue a Market Notice authorizing the ECEII to be disclosed, subject to objection as further provided in paragraph (c) below. ERCOT shall make such a determination no later than five Business Days following the date it receives the request.

(b) The Market Notice issued pursuant to paragraph (a)(i) or (ii) above shall identify the ECEII to be disclosed; the party requesting the disclosure; the public benefit justifying the proposed disclosure; the date on which the information may be disclosed, which shall be no sooner than five Business Days following the date of the Market Notice; and, if the proposed disclosure is not to the public, the persons to whom ECEII would be disclosed. The authorization shall be effective unless a Market Participant submits an objection pursuant to paragraph (c) below.

(c) Any Market Participant may submit written objections to the proposed disclosure. Such objections shall be submitted by e-mail to ERCOT’s General Counsel no later than the end of the fourth Business Day following the issuance of the Market Notice described in paragraph (b) above. Failure to object to the proposed allowance of ECEII disclosure pursuant to this paragraph shall constitute a waiver of any such objection for all purposes. ERCOT shall provide notice of the objection to the party requesting authorization to disclose ECEII no later than the end of the Business Day following receipt of the objection. The party requesting authorization to disclose ECEII shall not disclose the ECEII if it has been notified of any objection pursuant to this paragraph unless and until ERCOT issues a second Market Notice authorizing disclosure, as provided in paragraph (d) below.

(d) If one or more objections to disclosure is submitted pursuant to paragraph (c) above, ERCOT shall issue a second Market Notice describing each such objection and stating whether the objection affects ERCOT’s determination as to the proposed disclosure of ECEII. If ERCOT determines that the ECEII should still be disclosed notwithstanding these objections, the second Market Notice shall establish the date on which the ECEII may be disclosed, which shall be no sooner than the fifth Business Day following the issuance of the second Market Notice. ERCOT’s determination in the second Market Notice is a final decision that may be challenged at the PUCT without using the processes described in Section 20, Alternative Dispute Resolution Procedure and Procedure for Return of Settlement Funds. If ERCOT authorizes a non-public disclosure of ECEII, the party disclosing the ECEII shall require each recipient of ECEII to enter into a nondisclosure agreement that includes the restrictions against disclosure described in Section 1.3.2, ERCOT Critical Energy Infrastructure Information, as a condition for obtaining the ECEII.

(e) Notwithstanding anything in this Section, ERCOT may disclose ECEII to any federal, state or local government official without issuing a Market Notice if ERCOT determines that such disclosure is necessary to facilitate the government official’s public duties and that the delay associated with providing the Notice otherwise required by this paragraph (3) would impair that government official’s ability to take action to address a public emergency. As soon as practicable, but no later than 24 hours following the disclosure:

(i) ERCOT shall provide Notice to the Disclosing Party and all Market Participants materially impacted by the disclosure; and

(ii) ERCOT shall issue a Market Notice describing the disclosure, unless ERCOT determines that such a Notice could jeopardize public safety or welfare, in which case no Notice is required.

(iii) Each Disclosing Party, other than ERCOT, shall provide Notice to each Creating Party whose information has been disclosed pursuant to this paragraph (e).

(f) Notwithstanding anything in this Section, any Receiving Party or Creating Party other than ERCOT may disclose ECEII to any federal, state or local government official without requesting prior authorization from ERCOT if the Receiving Party or Creating Party determines that such disclosure is necessary to facilitate the government official’s public duties and that the delay associated with requesting prior ERCOT authorization as otherwise required by this paragraph (3) would impair that government official’s ability to take action to address a public emergency.

(i) The Receiving Party or Creating Party shall provide Notice to ERCOT and all Market Participants materially impacted by the disclosure as soon as practicable, but no later than 24 hours following the disclosure.

(ii) ERCOT shall issue a Market Notice describing the disclosure as soon as practicable, but no later than 24 hours following receipt of notice from the Receiving Party or Creating Party, unless ERCOT determines that such a Notice could jeopardize public safety or welfare, in which case no Notice is required.

1.7 Rules of Construction

(1) Capitalized terms and acronyms used in the Protocols have the meanings set out in Section 2, Definitions and Acronyms, of these Protocols or the meanings expressly set out in another Section of the Protocols. If a capitalized term or acronym is defined in both Section 2, and another Section of these Protocols, then the definition in that other Section controls the meaning of that term or acronym in that Section, but the definition in Section 2, controls in all other Sections of the Protocols; and

(2) In these Protocols, unless the context clearly otherwise requires:

(a) The singular includes the plural and vice versa;

(b) The present tense includes the future tense, and the future tense includes the present tense;

(c) Words importing any gender include the other gender;

(d) The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation;”

(e) The word “shall” denotes a duty;

(f) The word “will” denotes a duty, unless the context denotes otherwise;

(g) The word “must” denotes a condition precedent or subsequent;

(h) The word “may” denotes a privilege or discretionary power;

(i) The phrase “may not” denotes a prohibition;

(j) Reference to a Section, Attachment, Exhibit, or Protocol means a Section, Attachment, Exhibit, or provision of these Protocols;

(k) References to any statutes, regulations, tariffs, or these Protocols are deemed references to such statute, regulation, tariff, or Protocol as it may be amended, replaced, or restated from time to time;

(l) Unless expressly stated otherwise, references to agreements and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent that the amendments and other modifications are not prohibited by these Protocols;

(m) References to persons or Entities include their respective successors and permitted assigns and, for governmental Entities, Entities succeeding to their respective functions and capacities;

(n) References to “writing” include printing, typing, lithography, and other means of reproducing words in a tangible visible form;

(o) Any reference to a day, week, month, or year is to a calendar day, week, month, or year unless otherwise noted; and

(p) Any reference to time is to Central Prevailing Time; the 24-hour clock is used unless otherwise noted.

(q) Any reference to dollars is U.S. currency dollars unless otherwise noted.

(r) All Settlement calculations are in dollars (USD), unless otherwise noted.

(s) Any reference to energy is electrical energy, unless otherwise noted.

(3) These provisions apply to giving notice under the Protocols:

(a) Where these Protocols require an Entity to provide, send, or deliver notice, or to notify another Entity, such notice shall be in writing unless otherwise specified. Where these Protocols do not specify the method by which written notice should be sent, then the notice may be sent by:

(i) Hand-delivery;

(ii) Electronic mail;

(iii) Facsimile transmission;

(iv) Overnight delivery service (e.g., Federal Express, DHL or similar service) that requires a signed receipt;

(v) The Messaging System, Market Notice, or other electronic means provided for by these Protocols; or

1. U.S. Mail, first class postage prepaid, registered (or certified) mail, return receipt requested, properly addressed.

(b) Notice by facsimile, electronic mail, the Messaging System, Market Notice, or other electronic means provided for by these Protocols is considered received when sent unless transmitted after 5:00 p.m. local time of the recipient or on a non-Business Day, in which case it is considered received one Business Day after it was sent.

(c) Notice by overnight delivery service that requires a signed receipt is considered received on the day that it was received.

(d) Notice by U.S. Mail is considered received three days after the date it was deposited in the U.S. Mail, first class postage prepaid, registered (or certified) mail, return receipt requested, properly addressed.

(e) If ERCOT is providing notice to a Market Participant as required by the Protocols, then such notice shall be provided to the Market Participant’s Authorized Representative and backup Authorized Representative, in addition to any other person who is required to receive notice under the Protocols. If ERCOT is providing notice to a Market Participant regarding a breach or default under an agreement contained in the Protocols, then such notice shall be provided to the Market Participant’s contact for notice listed in Section 22, Attachment A Standard Form Market Participant Agreement. If a Market Participant is providing notice to ERCOT as required by the Protocols or as provided under an agreement contained in the Protocols, then such notice shall be provided to ERCOT’s contact for notice listed in Section 22, Attachment A.

(f) When the Protocols require a notice to be in writing, sending it by electronic mail, the Messaging System, Market Notice, or other electronic means satisfies the requirement that the notice be in writing.

(4) Nothing in these Protocols may be construed to grant any jurisdiction or authority to NERC or FERC that they do not otherwise have.

2.1 DEFINITIONS**ERCOT Research and Innovation (R&I)**

The creative, innovative, and/or systematic work undertaken with ERCOT’s direction or collaboration and that ERCOT believes will improve its ability to plan and/or operate the ERCOT System and/or ERCOT markets. ERCOT R&I work may include, but is not limited to, research or experimental technology development.

**ERCOT Research and Innovation (R&I) Partner**

An Entity chosen at ERCOT’s discretion that works with ERCOT to perform ERCOT Research and Innovation. ERCOT Research and Innovation (R&I) Partners are not paid for their services, but work with ERCOT to advance common research or innovation goals. **Market Notice**

A notice required by the Protocols or any Other Binding Document, or at ERCOT’s discretion, regarding market-relevant information or other information that is communicated through ERCOT publicly-subscribed electronic distribution channels, or to relevant groups of Authorized Representatives as ERCOT may deem appropriate.

Notice or Notification

The sending of information by an Entity to Market Participants, ERCOT, or others, as called for in these Protocols. Notice or Notification may be sent by electronic mail, facsimile transmission, U.S. mail, or any other method authorized by the Protocols.

16.1 Registration and Execution of Agreements

(1) ERCOT shall require each Market Participant to register and execute the Standard Form Market Participant Agreement and, as applicable, Standard Form Reliability Must-Run Agreement, and Standard Form Black Start Agreement.

(2) A Standard Form Market Participant Agreement is in Section 22, Attachments, and ERCOT shall also post this agreement on the ERCOT website.

(3) ERCOT shall post on the ERCOT website all registration procedures and applications necessary to complete registration for any function described in these Protocols. As part of its registration procedures, ERCOT may require one or more of the following:

(a) Reasonable tests of the ability of a Market Participant to communicate with ERCOT or perform as required under these Protocols;

(b) An application fee as determined by the ERCOT Board;

(c) Related agreements for specific purposes (such as agency designation, meter splitting, or network interconnection) that apply only to some Market Participants;

(d) A representation to ERCOT that no officer, owner, partner or other equity interest owner of the Entity was CEO or President or collectively held more than a 10% equity interest in (as owner, partner or other equity interest owner) another Entity at the time of a default where the default resulted in amounts owed to ERCOT remaining unpaid on any Agreement with ERCOT; and

(e) An attestation regarding citizenship, ownership, or headquarters of the Entity seeking to register as a Market Participant.

(4) A Market Participant shall subscribe to any public distribution lists for Market Notices that are relevant to the Market Participant’s operations or obligations.