



Item 11 : ERCOT Lancium Patent License Agreement Disclosure

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Senior Vice President, Regulatory Policy, General Counsel, and Chief Compliance Officer

Board of Directors Meeting

ERCOT Public

April 7-8, 2025

Overview

- **Purpose**

- Present update on Lancium offer to license to ERCOT its patents potentially applicable to Controllable Load Resources' (CLR) and other Load Resources' participation in Ancillary Services

- **Voting Items / Requests**

- No action is requested of the Board; for discussion only

- **Key Takeaways**

- Proposed license by Lancium to ERCOT (Attachment A) will remove potential impediment to greater registration and participation of Loads as CLRs
- Lancium has offered the license at no cost
- ERCOT has previewed the material terms of the license to stakeholders and is prepared to execute

Lancium Patents

- Lancium, LLC is a Market Participant registered with ERCOT as a Qualified Scheduling Entity (QSE), Load Serving Entity (LSE), and Resource Entity (RE)
- Lancium owns a patent portfolio that includes the '433 patent, which focuses on determining a performance strategy for a Load using power option data based on a power option agreement
- Lancium and certain Load Resources have been engaged in disputes regarding whether market participation activities infringe Lancium's patents and whether the patents are invalid
- Large Flexible Loads (LFLs) may be unwilling to register and participate in the ERCOT market as CLRs if that risks intellectual property infringement disputes

Key Takeaway: Lancium's patents may be acting as a barrier to entry for increased CLR participation in the ERCOT market

Nodal Protocol Revision Request (NPRR) 1262

- In November 2024, Cholla Petroleum submitted NPRR1262, *Ancillary Service Opt Out Clarification*, proposing to clarify that a QSE representing a CLR has the ability to “opt out” of providing an Ancillary Service from that specific CLR by switching the responsibility to another Resource that the QSE represents
- Cholla maintains in its comments that this clarification was necessary to show that Lancium’s patents are inapplicable based on a determination at the U.S. Patent Office that the ability to “opt out” from a demand response event is outside the scope of Lancium’s patents
- NPRR1262 has been tabled at PRS to allow for ERCOT and Lancium discussions to proceed

Key Takeaway: A Market Participant submitted NPRR1262 to clarify that Lancium’s patents do not apply to how CLRs participate in the ERCOT market

License Agreement

- Lancium proposes to license its relevant patents to ERCOT at no cost, which ERCOT would then sublicense to CLRs and any other applicable Market Participants or entities
- On February 27, ERCOT and Lancium executed a confidential term sheet that agrees in principle to a no-cost licensing arrangement
 - The patent license approach in this case is beneficial because it resolves potential barrier-to-entry concerns at no cost to Market Participants
- On March 4, ERCOT and Lancium posted Joint Comments in NPRR1262 to provide transparency regarding terms material to stakeholders
- ERCOT and Lancium subsequently reached agreement on the license document, which is ready for execution pending this update to the Board

Key Takeaway: Lancium has offered to license its relevant patents to ERCOT at no cost, which should resolve potential Load Resources' patent infringement concerns

License Terms

- The license will:
 - be non-exclusive, perpetual, sublicensable, irrevocable, fully-paid, royalty-free, non-transferrable, and restricted solely to within the ERCOT Region
 - allow licensees to make, have made, use, sell, offer for sale, import, or otherwise distribute products and services and to practice any methods, process, and procedures that would otherwise infringe the licensed patents
 - include all Lancium U.S. patents, whether existing or that may issue from subsequent Lancium patent applications, that may be needed to allow Load Resources to register and participate as CLRs or provide Ancillary Services
 - ERCOT and its sublicensees will be released and discharged from any and all claims of infringement of the licensed patents in the ERCOT Region

Key Takeaway: License removes the potential of Load Resources infringing by participating in Ancillary Services for the life of Lancium's patents and releases any potential preexisting infringement claims

Next Steps

- ERCOT and Lancium will execute the license agreement
- The license agreement will be publicly posted to the ERCOT website upon execution and ERCOT will publicize this via a Market Notice

Key Takeaway: ERCOT will post the license on the ERCOT website and issue a Market Notice following execution of the license agreement

Attachment A

Patent License Agreement

This Patent License Agreement (“**Agreement**”) is made and entered into as of the last date of the signatures below (“**Effective Date**”) by and between the Electric Reliability Council of Texas, Inc., a Texas non-profit corporation having an office at 2705 W Lake Dr, Taylor, TX 76574 (“**ERCOT**”), and Lancium LLC, a Texas limited liability company having an office at 9002 Six Pines Drive, Suite 134, Shenandoah, TX 77380 (“**Lancium**”). ERCOT and Lancium may collectively be referred to herein as the “**Parties**” and each as a “**Party**.”

WHEREAS Lancium owns the Licensed Patents and wishes to provide goodwill and increase market participation in certain ERCOT programs in the Licensed Territory by providing to ERCOT a license to and under the Licensed Patents upon the terms and conditions set forth in this Agreement;

WHEREAS ERCOT wishes to obtain a license to the Licensed Patents to allow *Resources* to freely register and participate as *Controllable Load Resources* in the Licensed Territory or provide *Ancillary Services* in the Licensed Territory (the “**Purpose**”), wherein the Parties agree each italicized term in this clause has a meaning under the ERCOT Nodal Protocols that are in effect as of the Effective Date;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and further good and valuable consideration, the legal sufficiency and receipt of which are hereby acknowledged, the Parties hereby agree as follows:

1. License Grant and Scope.

1.1 License. Subject to the terms and conditions of this Agreement, Lancium hereby grants to ERCOT a non-exclusive, perpetual, sublicensable, irrevocable, fully-paid, royalty-free, non-transferrable, license solely under the Licensed Patents and restricted solely to within the Licensed Territory, to: (i) make, have made, use, sell, offer for sale, import, or otherwise distribute any products (including software) and services that would otherwise infringe the Licensed Patents, and (ii) practice any methods, processes, and procedures that would otherwise infringe the Licensed Patents.

1.2 Licensed Patents. “**Licensed Patents**” shall mean all U.S. patents identified in **Schedule A**, including whether original or subsequently reissued, and all U.S. patents that may issue from patent applications identified in Schedule A, and all U.S. patents that may issue from subsequent patent applications claiming priority to said applications listed in Schedule A, and additionally all Lancium U.S. patents, whether existing or that may issue from subsequent Lancium patent applications, that are needed to effectuate the Purpose of this Agreement.

1.3 Future Licensed Patents. During the term of this Agreement, if ERCOT identifies future Lancium patents it wishes to include within the scope of the Licensed Patents, both Parties agree to negotiate in good faith regarding amending Schedule A to include such patents, consistent with the Purpose of this Agreement.

1.4 Licensed Territory. “**Licensed Territory**” shall mean the “**ERCOT ISO Service Territory**,” which is defined as the ERCOT Power Region as it is understood to exist according to the Texas Public Utility Regulatory Act as of the Effective Date of this Agreement.

2. Release. Lancium fully and forever releases, acquits, and discharges ERCOT and its sublicensees (whether licensed now or in the future), from any and all claims, demands, causes of action, damages, liabilities, or suits—whether known or unknown, asserted or unasserted, foreseen or unforeseen—that Lancium has or may have in the future, of any alleged infringement of the Licensed Patents in the Licensed Territory, to the extent such alleged infringement results from or is connected to ERCOT or its sublicensees, making, having made, using, selling, offering for sale, importing, or otherwise distributing any products (including software) and services that would otherwise infringe the Licensed Patents in the Licensed Territory, or practicing any methods, processes, and procedures that would otherwise infringe the Licensed Patents in the Licensed Territory.

3. Liability. The Parties agree that this Agreement is entered into for the purpose of resolving potential disputes and ensuring mutual cooperation, and neither the execution of this Agreement nor any actions taken in advancement of executing this Agreement shall be construed as an admission, or used as evidence, of liability, wrongdoing, or infringement of any intellectual property rights by either Party. Both Parties expressly deny and disclaim any such liability or wrongdoing.

4. Confidentiality. The Parties agree that this Agreement can be made public and available to stakeholders and may further be published and recorded with any government agency or department as desired by a Party.

5. Compliance with Laws.

5.1 [RESERVED]

6. Representations and Warranties.

6.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

(b) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary organizational action of the Party; and

(c) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of that Party, enforceable against that Party in accordance with its terms.

7. Exclusion of Consequential and Other Direct Damages. TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON FOR ANY INJURY TO OR LOSS OF GOODWILL, REPUTATION, BUSINESS PRODUCTION, REVENUES, PROFITS, ANTICIPATED PROFITS, CONTRACTS, OR OPPORTUNITIES (REGARDLESS OF HOW THESE ARE CLASSIFIED AS DAMAGES), OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, OR ENHANCED DAMAGES, ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY,

PRODUCT LIABILITY, OR OTHERWISE (INCLUDING THE ENTRY INTO, PERFORMANCE, OR BREACH OF THIS AGREEMENT), REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE AND THE PARTY AGAINST WHOM LIABILITY IS CLAIMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED REMEDY OF ITS ESSENTIAL PURPOSE.

8. Indemnification. Neither party will have any indemnification obligations in connection with the license granted under this Agreement.

9. Term and Termination.

9.1 Term. This Agreement and all rights granted under this Agreement shall continue in perpetuity until the expiration of the last patent in the Licensed Patents.

9.2 Either Party may terminate this Agreement on written notice to the other Party if the other Party materially breaches this Agreement and fails to cure such breach within sixty (60) days after receiving written notice thereof.

9.3 Either Party may terminate this Agreement, effective immediately, if the other Party: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (iii) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for or has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

9.4 The License, Release, and Liability provisions in Sections 1.1, 1.2, 1.4, 2, and 3 shall survive termination.

10. Miscellaneous.

10.1 Bankruptcy. All rights and licenses granted by Lancium under this Agreement are and will be deemed to be rights and licenses to "intellectual property" as such term is used in, and interpreted under, Section 365(n) of the United States Bankruptcy Code (the "**Bankruptcy Code**") (11 U.S.C. § 365(n)). ERCOT has all rights, elections, and protections under the Bankruptcy Code and all other bankruptcy, insolvency, and similar laws with respect to the Agreement, and the subject matter hereof. Without limiting the generality of the foregoing, Lancium acknowledges and agrees that, if Lancium or its estate shall become subject to any bankruptcy or similar proceeding, subject to ERCOT's rights of election under Section 365(n), all rights, licenses, and privileges granted to ERCOT under this Agreement will continue subject to the respective terms and conditions hereof, and will not be affected, even by Lancium's rejection of this Agreement.

10.2 Independent Contractors. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement creates any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither Party has authority to contract for nor bind the other Party in any manner whatsoever.

10.3 Notices. All notices, requests, consents, claims, demands, waivers, and other communications (other than routine communications having no legal effect) must be in writing and sent to the respective Party at the addresses indicated below (or such other address for a Party as may be specified in a notice given in accordance with this Section):

If to Lancium: Lancium LLC
ATTN: Legal Department
9002 Six Pines Drive, Suite 134
Shenandoah, TX 77380
Email: legal@lancium.com

If to ERCOT: Electric Reliability Council of Texas, Inc.
ATTN: Legal Department
8000 Metropolis Drive
Building E, Suite 100
Austin, TX 78744

Notices sent in accordance with this Section 10.3 will be deemed effective: (a) when received or delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); or (c) on the date sent by email if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient.

10.4 Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

10.5 Assignment. Except as otherwise expressly provided in this Agreement, neither Party may assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations, hereunder without the prior written consent of the other Party (which consent may not be unreasonably withheld, conditioned, or delayed).

10.6 Amendment; Modification; Waiver. This Agreement, including Schedule A, may only be amended, modified, or supplemented by an agreement in writing signed by each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the waiving Party.

10.7 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

10.8 Governing Law; Submission to Jurisdiction. This Agreement and any disputes thereunder between the Parties are governed by, and construed in accordance with, the laws of the

State of Texas, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas. The Parties consent to the jurisdiction of the state and federal courts in the State of Texas and shall submit any dispute related to this Agreement to the courts of the State of Texas or a federal court sited therein, as may be applicable.

10.9 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission to which a signed PDF copy is attached, including electronic document signature services, will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized.

LANCIUM LLC

By: _____

Name: Michael McNamara

Title: CEO

Date: _____

Electric Reliability Council of Texas, Inc.

By: _____

Name: Chad V. Seely

Title: Senior Vice President, Regulatory Policy, General Counsel, & Chief Compliance Officer

Date: _____