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| NPRR Number | [1264](https://www.ercot.com/mktrules/issues/NPRR1264) | NPRR Title | Creation of a New Energy Attribute Certificate Program |
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| Date | | July 14, 2025 | |
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| Submitter’s Information | | | |
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| Company | | Texas Energy Buyers Alliance (TEBA); Goff Policy | |
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| Market Segment | |  | |

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| Comments |

These comments modify the initial approach suggested by TEBA, which had detailed system requirements and program design expectations. In lieu of that, this proposal requires ERCOT to provide metering data to a single third-party provider of Energy Attribute Certificate (EAC) services that can meet the qualifications suggested herein, which are:

1. Registering EAC generators and Account Holders;
2. Maintaining a secure registry and trading platform that allows for tracking attributes including hour, location, fuel type, at Watt-hour (Wh) granularity;
3. Providing a methodology to account for storage charging and losses;
4. Providing a methodology for third-party verifiers to use auditable processes to track additional attributes; and
5. Providing and maintaining an Application Programming Interface (API) that at minimum:
   1. enables EAC creation, transfer, and retirement;
   2. allows for functions to be delegated by the participation to an agent of the participant;
   3. enables viewing contact information for other participants; and
   4. enables viewing a list of all EACs in a way that maintains the confidentiality of generator information for 60 days after the operating date.

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| Revised Cover Page Language |

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| Nodal Protocol Sections Requiring Revision | 1.3.1.1, Items Considered Protected Information  2.1, Definitions  2.2, Acronyms and Abbreviations  14, State Of Texas Renewable Energy Credit Trading Program  14.1, Overview  14.2, Duties of ERCOT (delete)  14.2.1, Site Visits  14.3, Creation of Renewable Energy Credit Accounts and Attributes of Renewable Energy Credits (delete)  14.3.1, Creation of Renewable Energy Credit Accounts  14.3.2, Attributes of Renewable Energy Credits and Compliance Premiums (delete)  14.4, Registration to Become a Renewable Energy Credit Generator or Renewable Energy Credit Aggregator  14.5.1, Renewable Energy Credit Generators and Renewable Energy Credit Offset Generators (delete)  14.6, Awarding of Renewable Energy Credits  14.7, Transfer of Renewable Energy Credits or Compliance Premiums Between Parties (delete)  14.10, Retiring of Renewable Energy Credits or Compliance Premiums (delete)  14.10.2, Voluntary Retirement (delete)  14.10.3, Retiring Unused Renewable Energy Credits or Compliance Premiums (delete)  14.11, Penalties and Enforcement (delete)  14.12, Maintain Public Information (delete)  14.12, Third-Party Certification Data Fields (new)  14.13, Submit Annual Report to Public Utility Commission of Texas  16.7, Registration of Renewable Energy Credit Account Holders  21.2, Submission of a Nodal Protocol Revision Request or System Change Request  Section 22, Attachment A, Standard Form Market Participant Agreement  Section 22, Attachment C, Amendment to Standard Form Market Participant Agreement |
| Revision Description | This Nodal Protocol Revision Request (NPRR) introduces the concept of Energy Attribute Certificates (EACs) and makes Renewable Energy Certificates (RECs) a subcategory of EACs. EACs can be earned by any generator, regardless of fuel type.  The EAC Trading Program will be administered by a third-party provider selected by ERCOT that meets the qualifications specified in this NPRR.  By introducing EACs, this NPRR also allows all generators, such as energy storage generators, nuclear generators, or other generators to participate in the program, and add specificity to their attributes so buyers and sellers know what they are transacting.  To add value to the EAC program, this NPRR creates a new category of participants – third-party certification programs. EAC Account Holders may use these third parties to provide documentation to ERCOT and other Market Participants about how they charged energy storage devices, provided fuel for generators, or met certain operational characteristics to be determined by Market Participants.  Finally, this NPRR adds a robust programmatic interface to EAC trading and accounting. |

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| Market Rules Notes |

Please note the baseline Protocol language in the following sections(s) has been updated to reflect the incorporation of the following NPRR(s) into the Protocols:

* NPRR1246, Energy Storage Resource Terminology Alignment for the Single-Model Era (incorporated 4/1/25)
  + Section 1.3.1.1
* NPRR1250, RPS Mandatory Program Termination (incorporated 4/1/25)
  + Section 2.1
  + Section 14.1
  + Section 14.2
  + Section 14.3.2
  + Section 14.5.2
  + Section 14.5.3
  + Section 14.6.2
  + Section 14.8
  + Section 14.9
  + Section 14.9.1
  + Section 14.9.2
  + Section 14.9.3
  + Section 14.9.3.1
  + Section 14.9.4
  + Section 14.9.5
  + Section 14.10.1
  + Section 14.10.2

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

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| Revised Proposed Protocol Language |

1.3.1.1 Items Considered Protected Information

(1) Subject to the exclusions set out in Section 1.3.1.2, Items Not Considered Protected Information, and in Section 3.2.5, Publication of Resource and Load Information, “Protected Information” is information containing or revealing any of the following:

(a) Base Points, as calculated by ERCOT. The Protected Information status of this information shall expire 60 days after the applicable Operating Day;

(b) Bids, offers, or pricing information identifiable to a specific Qualified Scheduling Entity (QSE) or Resource. The Protected Information status of part of this information shall expire 60 days after the applicable Operating Day, as follows:

(i) Ancillary Service Offers by Operating Hour for each Resource for all Ancillary Services submitted for the Day-Ahead Market (DAM) or any Supplemental Ancillary Services Market (SASM);

(ii) The quantity of Ancillary Service offered by Operating Hour for each Resource for all Ancillary Service submitted for the DAM or any SASM; and

(iii) Energy Offer Curve prices and quantities for each Settlement Interval by Resource. The Protected Information status of this information shall expire within seven days after the applicable Operating Day if required to be posted as part of paragraph (5) of Section 3.2.5 and within two days after the applicable Operating Day if required to be posted as part of paragraph (7) of Section 3.2.5;

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| ***[NPRR1013 and NPRR1188: Replace applicable portions of paragraph (b) above with the following upon system implementation for NPRR1188; or upon system implementation of the Real-Time Co-Optimization (RTC) project for NPRR1013:]***  (b) Bids, offers, or pricing information identifiable to a specific Qualified Scheduling Entity (QSE) or Resource. The Protected Information status of part of this information shall expire 60 days after the applicable Operating Day, as follows:  (i) Ancillary Service Offers by Operating Hour or Security-Constrained Economic Dispatch (SCED) interval for each Resource for all Ancillary Services submitted for the Day-Ahead Market (DAM) or Real-Time Market (RTM);  (ii) The quantity of Ancillary Service offered by Operating Hour or SCED interval for each Resource for all Ancillary Service submitted for the DAM or RTM; and  (iii) The prices and quantities presented in a Resource’s Energy Offer Curve or Energy Bid Curve by Operating Hour or SCED interval. The Protected Information status of this information shall expire within seven days after the applicable Operating Day if required to be posted as part of paragraph (5) of Section 3.2.5 and within two days after the applicable Operating Day if required to be posted as part of paragraph (7) of Section 3.2.5; |

(c) Status of Resources, including Outages, limitations, or scheduled or metered Resource data. The Protected Information status of this information shall expire as follows:

(i) For each Forced Outage, Maintenance Outage, or Forced Derate of a Generation Resource or Energy Storage Resource (ESR) that occurs during or extends into an Operating Day, the Protected Information status of the following information shall expire three days after the applicable Operating Day:

(A) The name and unit code of the Resource affected;

(B) The Resource’s fuel type;

(C) The type of Outage or derate;

(D) The start date/time and the planned and actual end date/time;

(E) The Resource’s applicable Seasonal net maximum sustainable rating;

(F) The available and outaged MW during the Outage or derate; and

(G) The entry in the “nature of work” field in the Outage Scheduler and any other information concerning the cause of the Outage or derate;

(ii) For each Resource Outage or Forced Derate that occurs during, or that extends into, any time period in which ERCOT has declared an Energy Emergency Alert (EEA), ERCOT may immediately disclose the information identified in paragraph (i) above to a state Governmental Authority, the office of the Governor of Texas, the office of the Lieutenant Governor of Texas, or any member of the Texas Legislature, if requested; and

(iii) For all other information, the Protected Information status shall expire 60 days after the applicable Operating Day;

(d) Current Operating Plans (COPs). The Protected Information status of this information shall expire 60 days after the applicable Operating Day;

(e) Ancillary Service Trades, Energy Trades, and Capacity Trades identifiable to a specific QSE or Resource. The Protected Information status of this information shall expire 180 days after the applicable Operating Day;

(f) Ancillary Service Schedules identifiable to a specific QSE or Resource. The Protected Information status of this information shall expire 60 days after the applicable Operating Day;

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| ***[NPRR1013: Replace paragraph (f) above with the following upon system implementation of the Real-Time Co-Optimization (RTC) project:]***  (f) Ancillary Service awards identifiable to a specific QSE or Resource. The Protected Information status of this information shall expire 60 days after the applicable Operating Day; |

(g) Dispatch Instructions identifiable to a specific QSE or Resource, except for Reliability Unit Commitment (RUC) commitments and decommitments as provided in Section 5.5.3, Communication of RUC Commitments and Decommitments. The Protected Information status of this information shall expire 180 days after the applicable Operating Day;

(h) Raw and Adjusted Metered Load (AML) data (demand and energy) identifiable to:

(i) A specific QSE or Load Serving Entity (LSE). The Protected Information status of this information shall expire 180 days after the applicable Operating Day; or

(ii) A specific Customer or Electric Service Identifier (ESI ID);

(i) Wholesale Storage Load (WSL) data identifiable to a specific QSE. The Protected Information status of this information shall expire 60 days after the applicable Operating Day;

(j) Settlement Statements and Invoices identifiable to a specific QSE. The Protected Information status of this information shall expire 180 days after the applicable Operating Day;

(k) Number of ESI IDs identifiable to a specific LSE. The Protected Information status of this information shall expire 365 days after the applicable Operating Day;

(l) Information related to generation interconnection requests, to the extent such information is not otherwise publicly available. The Protected Information status of certain generation interconnection request information expires as provided in Section 1.3.1.4, Expiration of Protected Information Status;

(m) Resource-specific costs, design and engineering data, including such data submitted in connection with a verifiable cost appeal;

(n) Congestion Revenue Right (CRR) credit limits, the identity of bidders in a CRR Auction, or other bidding information identifiable to a specific CRR Account Holder. The Protected Information status of this information shall expire as follows:

(i) The Protected Information status of the identities of CRR bidders that become CRR Owners and the number and type of CRRs that they each own shall expire at the end of the CRR Auction in which the CRRs were first sold; and

(ii) The Protected Information status of all other CRR information identified above in item (n) shall expire six months after the end of the year in which the CRR was effective.

(o) Energy Attribute Certificate (EAC) Account balances. The Protected Information status of this information shall expire three years after the REC Settlement period ends;

(p) Credit limits identifiable to a specific QSE;

(q) Any information that is designated as Protected Information in writing by Disclosing Party at the time the information is provided to Receiving Party except for information that is expressly designated not to be Protected Information by Section 1.3.1.2 or that, pursuant to Section 1.3.1.4, is no longer confidential;

(r) Any information compiled by a Market Participant on a Customer that in the normal course of a Market Participant’s business that makes possible the identification of any individual Customer by matching such information with the Customer’s name, address, account number, type of classification service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing record, or any other information that a Customer has expressly requested not be disclosed (“Proprietary Customer Information”) unless the Customer has authorized the release for public disclosure of that information in a manner approved by the Public Utility Commission of Texas (PUCT). Information that is redacted or organized in such a way as to make it impossible to identify the Customer to whom the information relates does not constitute Proprietary Customer Information;

(s) Any software, products of software, or other vendor information that ERCOT is required to keep confidential under its agreements;

(t) QSE, Transmission Service Provider (TSP), and Distribution Service Provider (DSP) backup plans collected by ERCOT under the Protocols or Other Binding Documents;

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| ***[NPRR857: Replace item (t) above with the following upon system implementation and satisfying the following conditions: (1) Southern Cross provides ERCOT with funds to cover the entire estimated cost of the project; and (2) Southern Cross has signed an interconnection agreement with a TSP and the TSP gives ERCOT written notice that Southern Cross has provided it with: (a) Notice to proceed with the construction of the interconnection; and (b) The financial security required to fund the interconnection facilities:]***  (t) QSE, Transmission Service Provider (TSP), Direct Current Tie Operator (DCTO), and Distribution Service Provider (DSP) backup plans collected by ERCOT under the Protocols or Other Binding Documents; |

(u) Direct Current Tie (DC Tie) Schedule information. The Protected Information status of this information shall expire on the date on which ERCOT files the report with the PUCT that is required by P.U.C. Subst. R. 25.192, Transmission Rates for Export from ERCOT, relating to energy imported and exported over DC Ties interconnected to the ERCOT System;

(v) Any Texas Standard Electronic Transaction (TX SET) transaction submitted by an LSE to ERCOT or received by an LSE from ERCOT. This paragraph does not apply to ERCOT’s compliance with:

(i) PUCT Substantive Rules on performance measure reporting;

(ii) These Protocols or Other Binding Documents; or

(iii) Any Technical Advisory Committee (TAC)-approved reporting requirements;

(w) Information concerning a Mothballed Generation Resource’s probability of return to service and expected lead time for returning to service submitted pursuant to Section 3.14.1.9, Generation Resource Status Updates;

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| ***[NPRR1246: Replace paragraph (w) above with the following upon system implementation of the Real-Time Co-Optimization (RTC) project:]***  (w) Information concerning the probability of return to service and expected lead time for returning to service for a Mothballed Generation Resource or Mothballed Energy Storage Resource (ESR), submitted pursuant to Section 3.14.1.9, Generation Resource/Energy Storage Resource Status Updates; |

(x) Information provided by Entities under Section 10.3.2.4, Reporting of Net   
 Generation Capacity;

(y) Alternative fuel reserve capability and firm gas availability information submitted pursuant to Section 6.5.9.3.1, Operating Condition Notice, Section 6.5.9.3.2, Advisory, and Section 6.5.9.3.3, Watch, and as defined by the Operating Guides;

(z) Non-public financial information provided by a Counter-Party to ERCOT pursuant to meeting its credit qualification requirements as well as the QSE’s form of credit support;

(aa) ESI ID, identity of Retail Electric Provider (REP), and MWh consumption associated with transmission-level Customers that submitted notice to have their Load excluded from the Solar Renewable Portfolio Standard (SRPS) calculation consistent with paragraph (r) above, and subsection (f) of P.U.C. Subst. R. 25.173, Renewable Energy Credit Program, or the Renewable Portfolio Standard (RPS) calculation consistent with subsection (j) of P.U.C. Subst. R. 25.173 as it was effective until December 31, 2023;

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| ***[NPRR1250: Delete paragraph (aa) above on September 1, 2025 and renumber accordingly.]*** |

(bb) Emergency operations plans submitted pursuant to P.U.C. Subst. R. 25.53,   
 Electric Service Emergency Operations Plans;

(cc) Information provided by a Counter-Party under Section 16.16.3, Verification of Risk Management Framework;

(dd) Any data related to Load response capabilities that are self-arranged by the LSE or pursuant to a bilateral agreement between a specific LSE and its Customers, other than data either related to any service procured by ERCOT or non-LSE-specific aggregated data.  Such data includes pricing, dispatch instructions, and other proprietary information of the Load response product;

(ee) Status of Settlement Only Generators (SOGs), including Outages, limitations, or scheduled or metered output data, except that ERCOT may disclose output data from an SOG as part of an extract or forwarded TX SET transaction provided to the LSE associated with the ESI ID of the Premise where the SOG is located. The Protected Information status of this information shall expire 60 days after the applicable Operating Day;

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| ***[NPRR829 and NPRR995: Replace applicable portions of paragraph (ee) above with the following upon system implementation:]***  (ee) Status of Settlement Only Generators (SOGs) and Settlement Only Energy Storage System (SOESS), including Outages, limitations, schedules, metered output and withdrawal data, or data telemetered for use in the calculation of Real-Time Liability (RTL) as described in Section 16.11.4.3.2, Real-Time Liability Estimate, except that ERCOT may disclose metered output and withdrawal data from an SOG or SOESS as part of an extract or forwarded TX SET transaction provided to the LSE associated with the ESI ID of the Premise where the SOG is located. The Protected Information status of this information shall expire 60 days after the applicable Operating Day; |

(ff) Any documents or data submitted to ERCOT in connection with an Alternative Dispute Resolution (ADR) proceeding. The Protected Information status of this information shall expire upon ERCOT’s issuance of a Market Notice indicating the disposition of the ADR proceeding pursuant to paragraph (1) of Section 20.9, Resolution of Alternative Dispute Resolution Proceedings and Notification to Market Participants, except to the extent the information continues to qualify as Protected Information pursuant to another paragraph of this Section 1.3.1.1;

(gg) Reasons for and future expectations of overrides to a specific Resource’s High Dispatch Limit (HDL) or Low Dispatch Limit (LDL). The Protected Information status of this information shall expire 60 days after the applicable Operating Day;

(hh) Information provided to ERCOT under Section 16.18, Cybersecurity Incident Notification, except that ERCOT may disclose general information concerning a Cybersecurity Incident in a Market Notice in accordance with paragraph (5) of Section 16.18 to assist Market Participants in mitigating risk associated with a Cybersecurity Incident;

(ii) Information disclosed in response to paragraphs (1)-(4) of the Natural Gas Pipeline Coordination section of Section 22, Attachment K, Declaration of Natural Gas Pipeline Coordination, submitted to ERCOT in accordance with Section 3.21, Submission of Declarations of Natural Gas Pipeline Coordination. The Protected Information status of Resource Outage information shall expire as provided in paragraph (1)(c) of Section 1.3.1.1;

(jj) Information concerning weatherization activities submitted to, obtained by, or generated by ERCOT in connection with P.U.C. Subst. R. 25.55, Weather Emergency Preparedness, if such information allows the identification of any Resource or Resource Entity;

(kk) Information provided to ERCOT:

(i) By a QSE under paragraph (3) of Section 3.14.5, Firm Fuel Supply Service, as part of an offer to provide Firm Fuel Supply Service (FFSS), except that within ten Business Days of issuing FFSS awards, ERCOT may disclose the identity of all Generation Resources that were offered as primary Generation Resources or alternate Generation Resources to provide FFSS for the most recent procurement period, including prices and quantities offered;

(ii) By a Resource Entity under paragraph (2) of Section 8.1.1.2.1.6, Firm Fuel Supply Service Resource Qualification, Testing, Decertification, and Recertification, as part of the voluntary process for ERCOT certification of a FFSS Qualified Contract; or

(iii) By a Resource Entity in a Force Majeure Event report required under paragraph (14) of Section 8.1.1.2.6;

(ll) Information provided to ERCOT pursuant to Section 16.2.1.1, QSE Background Check Process, or Section 16.8.1.1, CRR Account Holder Background Check Process; and

(mm) Information concerning coal or lignite inventory provided by a QSE under Section 3.24, Notification of Low Coal and Lignite Inventory Levels.

## 2.1 DEFINITIONS



Designated Representative

A responsible natural person authorized by an Entity to register with ERCOT as an Energy Attribute Certificate (EAC) Account Holder or manage an EAC Account.

**Energy Attribute Certificate (EAC)**

A tradable instrument that represents all of the attributes associated with one MWh of production from a generator that registers to participate in the program. An EAC may be fractional. EACs do not include any energy, capacity, reliability, or other power attributes used to provide electricity services, nor liabilities associated with such generation, nor any tax credits, depreciation allowances or third-party subsidies of any kind.

*Renewable Energy Credit (REC)*

A tradable instrument that represents all of the renewable attributes associated with one MWh of production from a certified renewable generator. RECs are a subcategory of EACs.

Energy Attribute Certificate (EAC) Account

An account maintained by ERCOT for the purpose of tracking the production, sale, transfer, purchase, and retirement of EACs by an EAC Account Holder.

Energy Attribute Certificate (EAC) Account Holder

An Entity registered with ERCOT to participate in the EAC Trading Program.

Energy Attribute Certificate (EAC) Trading Program

The EAC Trading Program, as described in Section 14, State of Texas Energy Attribute Certificate Trading Program, which includes the Renewable Energy Credit (REC) trading program described in P.U.C. Subst. R. 25.173, Renewable Energy Credit Program.

Market Participant

An Entity, other than ERCOT, that engages in any activity that is in whole or in part the subject of these Protocols, regardless of whether that Entity has signed an Agreement with ERCOT. Examples of such an Entity include but are not limited to the following:

(a) Load Serving Entity (LSE);

(b) Qualified Scheduling Entity (QSE);

(c) Transmission and/or Distribution Service Provider (TDSP);

(d) Congestion Revenue Right (CRR) Account Holder;

(e) Resource Entity;

(f) Independent Market Information System Registered Entity (IMRE); and

(g) Energy Attribute Certificate (EAC) Account Holder.

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| ***[NPRR857: Replace the above definition “Market Participant” with the following upon system implementation and satisfying the following conditions: (1) Southern Cross provides ERCOT with funds to cover the entire estimated cost of the project; and (2) Southern Cross has signed an interconnection agreement with a TSP and the TSP gives ERCOT written notice that Southern Cross has provided it with: (a) Notice to proceed with the construction of the interconnection; and (b) The financial security required to fund the interconnection facilities:]***  **Market Participant**  An Entity, other than ERCOT, that engages in any activity that is in whole or in part the subject of these Protocols, regardless of whether that Entity has signed an Agreement with ERCOT. Examples of such an Entity include but are not limited to the following:  (a) Load Serving Entity (LSE);  (b) Qualified Scheduling Entity (QSE);  (c) Transmission and/or Distribution Service Provider (TDSP);  (d) Direct Current Tie Operator (DCTO);  (e) Congestion Revenue Right (CRR) Account Holder;  (f) Resource Entity;  (g) Independent Market Information System Registered Entity (IMRE); and  (h) Energy Attribute Certificate (EAC) Account Holder. |

## 2.2 ACRONYMS AND ABBREVIATIONS

**API** Application Programming Interface

**EAC** Energy Attribute Certificate

**Wh** Watt-hour

**ERCOT Nodal Protocols**

**Section 14: State of Texas Energy Attribute Certificate Trading Program**

**TBD**

# 14 State of Texas ENERGY ATTRIBUTE CERTIFICATE Trading Program

14.1 Overview

(1) On May 9, 2000, the Public Utility Commission of Texas (PUCT) appointed ERCOT as Program Administrator of the Renewable Energy Credits (REC) trading program described in subsection (h) of P.U.C. Subst. R. 25.173, Renewable Energy Credit Program. On November 30, 2023, the PUCT reaffirmed ERCOT as Program Administrator of the REC trading program described in subsection (a)(2) of P.U.C. Subst. R. 25.173. The PUCT also established a Solar Renewable Portfolio Standard (SRPS) pursuant to Section 53 of House Bill 1500, enacted by the 88th Texas Legislature, Regular Session, to be phased out by September 1, 2025. Public Utility Regulatory Act (PURA) § 39.9113, adopted by the 88th Texas Legislature and implemented by the PUCT in P.U.C. Subst. R. 25.173, require that ERCOT administer a voluntary trading program on an ongoing basis.

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| ***[NPRR1250: Replace paragraph (1) above with the following on September 1, 2025:]***  (1) On May 9, 2000, the Public Utility Commission of Texas (PUCT) appointed ERCOT as Program Administrator of the Renewable Energy Credits (REC) trading program described in subsection (h) of P.U.C. Subst. R. 25.173, Renewable Energy Credit Program. On November 30, 2023, the PUCT reaffirmed ERCOT as Program Administrator of the REC trading program described in subsection (a)(2) of P.U.C. Subst. R. 25.173. Public Utility Regulatory Act (PURA) § 39.9113, adopted by the 88th Texas Legislature and implemented by the PUCT in P.U.C. Subst. R. 25.173, require that ERCOT administer a voluntary trading program on an ongoing basis. |

(2) The purpose of the Energy Attribute Certificate (EAC) Trading Program is to provide a voluntary EAC and REC market as required by PURA §39.9113 and these Protocols.

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| ***[NPRR1250: Replace paragraph (2) above with the following on September 1, 2025:]***  (2) The purpose of the Energy Attribute Certificate (EAC) Trading Program is to provide a voluntary EAC and REC market as required by PURA §39.9113 and these Protocols.: |

(3) ERCOT must provide metering data and other relevant information to a single qualified national third-party EAC administrator to operate and maintain the EAC Trading Program that ERCOT selects. This administrator is responsible for all program functions, including but not limited to:

(a) Registering EAC generators and Account Holders;

(b) Maintaining a secure registry and trading platform that allows for tracking attributes including hour, location, fuel type, at Watt-hour (Wh) granularity;

(c) Providing a methodology to account for storage charging and losses;

(d) Providing a methodology for third-party verifiers to use auditable processes to track additional attributes; and

(e) Providing and maintaining an Application Programming Interface (API) that at minimum:

(i) Enables EAC creation, transfer, and retirement;

(ii) Allows for functions to be delegated by the participation to an agent of the participant;

(iii) Enables viewing contact information for other participants; and

(iv) Enables viewing a list of all EACs in a way that maintains the confidentiality of generator information for 60 days after the operating date.



(4) When ERCOT selects a   
 single national EAC registry software provider to provide data to,   
 the input from EAC Market Participants (via a one-time survey)   
 and Technical Advisory Committee (TAC) should be a significant factor   
 in determining the choice of the national EAC registry software provider.

(5) The third-party administrator must provide an annual report to ERCOT that demonstrates it has been audited and it continues to meet the requirements of this Section.

14.2 Site Visits

(1) ERCOT may conduct site visits to energy generation facilities on a random basis to ensure integrity of the EAC Trading Program, as deemed necessary. ERCOT shall require each registered energy generator to provide one or more contact persons for purpose of site visit notification. ERCOT shall provide at least 48 hours’ notice to the designated contact(s) prior to conducting a site visit for Intermittent Renewable Resources (IRRs) only.











14.3 Registration to Become an Energy Attribute Certificate Generator or Renewable Energy Credit Aggregator

(1) Renewable Energy Credit (REC) generators or REC aggregators must apply to the Public Utility Commission of Texas (PUCT) for certification to produce or aggregate RECs. On receipt of a copy of a notification from the PUCT certifying that a renewable energy generation facility is eligible to generate or an Entity is eligible to aggregate RECs, ERCOT shall establish an Energy Attribute Certificate (EAC) trading account for the facility or Entity. Each EAC trading account shall have a unique identification number.

(2) ERCOT may close an account holding no EACs for a period of one year after providing 30 days’ advance Notice to the EAC Account Holder.

**14.4** **Awarding of Renewable Energy Attribute Certificates**

(1) Following the end of each calendar month, and before the end of the next Business Day following receipt of all Energy Attribute Certificate (EAC) generator data, ERCOT will credit EACs to the appropriate EAC trading account. ERCOT shall base the number of EACs to be issued on the MWh generation data provided by EAC generators or ERCOT as applicable. The number of EACs issued to a specific EAC generator will be equal to the number of MWh generated by the certified generator during the month.

(2) If a Renewable Energy Credit (REC) generator is decertified during the quarter, RECs will be issued on MWhs produced during the month until the date and time of decertification.



**14.5 Submit Annual Report to Public Utility Commission of Texas**

(1) Beginning in 2002, ERCOT shall submit an annual report to the Public Utility Commission of Texas (PUCT) on or before the date set forth for such report in subsection (h)(11) of P.U.C. Subst. R. 25.173, Renewable Energy Credit Program. Such report shall contain the following information pertaining to program operation for the previous year:

(a) MW of existing renewable capacity installed in Texas, by technology type;

(b) MW of new renewable energy capacity installed in Texas, by technology type;

(c) List of eligible non-Texas capacity participating in the program, by technology type;

(d) Summary of Renewable Energy Credit (REC) aggregator activities, submitted in a format specified by the PUCT;

(e) Owner/operator of each REC generating facility;

(f) Date each new renewable energy facility began to produce energy;

(g) MWh of energy generated by renewable energy Resources as demonstrated through data supplied in accordance with these Protocols;

(h) List of renewable energy unit retirements;

(i) List of all EAC Account Holders participating in the EAC Trading Program;

(j) Final Solar Renewable Portfolio Standard (SRPS) Requirement (FSRR) of each Retail Entity;

(k) Number of REC offsets used by each Retail Entity;

(l) A list of REC offset generators, REC offsets awarded and MWh production from each such generator on an annual basis;

(m) Number of RECs retired by each program participant by category (mandatory compliance, voluntary retirement, expiration, and total retirements);

(n) List of all Retail Entities in compliance with SRPS requirement; and

(o) List of all Retail Entities not in compliance with SRPS requirement including the number of RECs by which they were deficient.

|  |
| --- |
| ***[NPRR1250: Replace paragraph (1) above with the following on September 1, 2025:]***  (1) Beginning in 2002, ERCOT shall submit an annual report to the Public Utility Commission of Texas (PUCT) on or before the date set forth for such report in subsection (h)(11) of P.U.C. Subst. R. 25.173, Renewable Energy Credit Program. Such report shall contain the following information pertaining to program operation for the previous year:  (a) MW of existing renewable capacity installed in Texas, by technology type;  (b) MW of new renewable energy capacity installed in Texas, by technology type;  (c) List of eligible non-Texas capacity participating in the program, by technology type;  (d) Summary of Renewable Energy Credit (REC) aggregator activities, submitted in a format specified by the PUCT;  (e) Owner/operator of each REC generating facility;  (f) Date each new renewable energy facility began to produce energy;  (g) MWh of energy generated by renewable energy Resources as demonstrated through data supplied in accordance with these Protocols;  (h) List of renewable energy unit retirements;  (i) List of all EAC Account Holders participating in the EAC Trading Program;  (j) Number of REC offsets used by each Retail Entity;  (k) A list of REC offset generators, REC offsets awarded and MWh production from each such generator on an annual basis; and  (l) Number of RECs retired by each program participant by category (mandatory compliance, voluntary retirement, expiration, and total retirements). |

16.7 Registration of Energy Attribute Certificate Account Holders

(1) Each Entity intending to participate in the Renewable Energy Credit (REC) program shall register with ERCOT and execute a Standard Form Market Participant Agreement (as provided in Section 22, Attachment A, Standard Form Market Participant Agreement) prior to participation in the REC program.

**21.2 Submission of a Nodal Protocol Revision Request or System Change Request**

(1) The following Entities may submit a Nodal Protocol Revision Request (NPRR) or System Change Request (SCR) (“Revision Request”):

(a) Any Market Participant;

(b) Any ERCOT Member;

(c) Public Utility Commission of Texas (PUCT) Staff;

(d) The Reliability Monitor;

(e) The North American Electric Reliability Corporation (NERC) Regional Entity;

(f) The Independent Market Monitor (IMM);

(g) ERCOT; and

(h) Any other Entity that meets the following qualifications:

(i) Resides (or represents residents) in Texas or operates in the Texas electricity market; and

(ii) Demonstrates that Entity (or those it represents) is affected by the Customer Registration or Energy Attribute Certificate (EAC) Trading Program sections of these Protocols.

**ERCOT Nodal Protocols**

**Section 22**

**Attachment A: Standard Form Market Participant Agreement**

**TBD**

Standard Form Market Participant Agreement

Between

Insert Participant

and

Electric Reliability Council of Texas, Inc.

This Market Participant Agreement (“Agreement”), effective as of the\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between Insert Participant, a [Insert State of Registration and Entity type] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).

1. **Recitals**

WHEREAS:

A. As defined in the ERCOT Protocols, Participant is a (check all that apply):

Load Serving Entity (LSE)

Qualified Scheduling Entity (QSE)

Transmission Service Provider (TSP)

Distribution Service Provider (DSP)

Congestion Revenue Right (CRR) Account Holder

Resource Entity

Energy Attribute Certificate (EAC) Account Holder

Independent Market Information System Registered Entity (IMRE)

B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and

C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.

Agreements

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the “Parties”) hereby agree as follows:

Section 1. Notice.

All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or overnight delivery service. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.

If to ERCOT:

Electric Reliability Council of Texas, Inc.

Attn: Legal Department

8000 Metropolis Drive (Building E), Suite 100

Austin, Texas 78744

Telephone: (512) 225-7000

Facsimile: (512) 225-7079

If to Participant:

[Insert Participant Name]

[Insert Contact Person/Dept.]

[Insert Street Address]

[Insert City, State Zip]

[Insert Telephone]

[Insert Facsimile]

Section 2. Definitions.

A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.

B. “ERCOT Protocols” shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and Settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.

Section 3. Term and Termination.

A. Term. The initial term ("Initial Term") of this Agreement shall commence on the Effective Date and continue until the last day of the month which is twelve (12) months from the Effective Date. After the Initial Term, this Agreement shall automatically renew for one-year terms (a "Renewal Term") unless the standard form of this Agreement contained in the ERCOT Protocols has been modified by a change to the ERCOT Protocols. If the standard form of this Agreement has been so modified, then this Agreement will terminate upon the effective date of the replacement agreement This Agreement may also be terminated during the Initial Term or the then-current Renewal Term in accordance with this Agreement.

B. Termination by Participant. Participant may, at its option, terminate this Agreement:

(1) Immediately upon the failure of ERCOT to continue to be certified by the PUCT as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151;

(2) If the “EAC Account Holder” box is checked in Section A. of the *Recitals* section of this Agreement, Participant may, at its option, terminate this Agreement immediately if the PUCT ceases to certify ERCOT as the Entity approved by the PUCT (“Program Administrator”) for carrying out the administrative responsibilities related to the Renewable Energy Credit Program as set forth in PUC Substantive Rule 25.173(g) without the immediate certification of another Program Administrator under PURA §39.151; or

(3) For any other reason at any time upon thirty days written notice to ERCOT.

C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.

Section 4. Representations, Warranties, and Covenants.

A. Participant represents, warrants, and covenants that:

(1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in Texas;

(2) Participant has full power and authority to enter into this Agreement and perform all obligations, representations, warranties and covenants under this Agreement;

(3) Participant’s past, present and future agreements or Participant’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant’s obligations under this Agreement;

(4) Market Participant’s execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;

(5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;

(6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4(A)(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;

(7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

(8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

(9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;

(10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and

(11) Participant acknowledges and affirms that the foregoing representations, warranties and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.

B. ERCOT represents, warrants and covenants that:

(1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;

(2) ERCOT is duly organized, validly existing and in good standing under the laws of Texas, and is authorized to do business in Texas;

(3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT’s obligations, representations, warranties and covenants under this Agreement;

(4) ERCOT's past, present and future agreements or ERCOT's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT's obligations under this Agreement;

(5) The execution, delivery and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;

(6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;

(7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;

(8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and

(9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on ERCOT's performance of its obligations under this Agreement.

Section 5. Participant Obligations.

A. Participant shall comply with, and be bound by, all ERCOT Protocols.

B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a “public utility” under the Federal Power Act or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.

Section 6. ERCOT Obligations.

A. ERCOT shall comply with, and be bound by, all ERCOT Protocols.

B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a “public utility” under the Federal Power Act, or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. If ERCOT receives any notice similar to that described in Section 5(B) from any Market Participant, ERCOT shall provide notice of same to Participant.

Section 7. [RESERVED]

Section 8. Default.

A. Event of Default.

(1) Failure by Participant to (i) pay when due, any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any agreement with ERCOT (“Payment Breach”), or (ii) designate/maintain an association with a QSE (if required by the ERCOT Protocols) (“QSE Affiliation Breach”), shall constitute a material breach and event of default ("Default") unless cured within one (1) Bank Business Day after ERCOT delivers written notice of the breach to Participant. Provided further that if such a material breach, regardless of whether the breaching Party cures the breach within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.

(2) A material breach other than a Payment Breach or a QSE Affiliation Breach includes any material failure by Participant to comply with the ERCOT Protocols. A material breach under this subsection shall constitute an event of Default by Participant unless cured within fourteen (14) Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery of the breach notice by ERCOT, and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.

A material breach under this subsection shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) Business Days, and Participant:

(a) Promptly provides ERCOT with written notice of the reasons why the breach cannot reasonably be cured within fourteen (14) Business Days;

(b) Begins to work or other efforts to cure the breach within three (3) Business Days after ERCOT’s delivery of the notice to Participant; and

(c) Prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.

(3) Bankruptcy by Participant, except for the filing of a petition in involuntary bankruptcy or similar involuntary proceedings, that is dismissed within 90 days thereafter, shall constitute an event of Default.

(4) Except as otherwise excused herein, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a Payment Breach, shall constitute a Default by ERCOT unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a 12-month period, the fourth such breach shall constitute a Default.

(5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.

B. Remedies for Default.

(1) ERCOT's Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 10: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice. In the event of Participant’s bankruptcy, Participant waives any right to challenge ERCOT’s right to set off amounts ERCOT owes to Participant by the amount of any sums owed by Participant to ERCOT, including any amounts owed pursuant to the operation of the Protocols.

(2) Participant's Remedies for Default.

(a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 10: Dispute Resolution of this Agreement in the event of a Default by ERCOT, Participant's remedies shall be limited to:

(i) Immediate termination of this Agreement upon written notice to ERCOT;

(ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols; and

(iii) Specific performance.

(b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.

(3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.

C. Force Majeure.

(1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.

(2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 8(A)(5) above is still effective.

D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

Section 9. Limitation of Damages and Liability and Indemnification.

A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.

B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.

C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).

D. The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM’s authority arising under or relating to PURA §39.1515 and PUC Subst. R. 25.365, Independent Market Monitor.

Section 10. Dispute Resolution.

A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.

B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.

Section 11. Miscellaneous.

A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).

B. Assignment.

(1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):

(a) Where any such assignment or transfer is to an Affiliate of the Party; or

(b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or

(c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notice of material breach pursuant to Section 8(A), notice of Default, and an opportunity for the Financing Person to cure a material breach pursuant to Section 8(A) prior to it becoming a Default.

(2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party’s obligations be enlarged, in whole or in part, by reason thereof.

C. No Third-Party Beneficiary. Except with respect to the rights of the Financing Persons in Section 11(B), (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (b) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.

D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (a) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (b) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party’s covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.

E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties’ intentions with respect thereto.

F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.

G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.

H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.

I. ERCOT's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and for reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any such information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.

J. Participant's Right to Audit ERCOT. Participant's right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.

K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.

L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.

M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

N. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:

(1) The singular includes the plural, and the plural includes the singular.

(2) The present tense includes the future tense, and the future tense includes the present tense.

(3) Words importing any gender include the other gender.

(4) The word “shall” denotes a duty.

(5) The word “must” denotes a condition precedent or subsequent.

(6) The word “may” denotes a privilege or discretionary power.

(7) The phrase “may not” denotes a prohibition.

(8) References to statutes, tariffs, regulations or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or ERCOT Protocols referred to.

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

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

(11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.

(12) References to articles, Sections (or subdivisions of Sections), exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.

(13) Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.

(14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.

(15) References to time are to Central Prevailing Time.

O. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.

***Electric Reliability Council of Texas, Inc.:***

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Participant:***

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Date:

Market Participant Name:

Market Participant DUNS:

|  |
| --- |
| ***[NPRR857: Replace Section 22 Attachment A above with the following upon system implementation and satisfying the following conditions: (1) Southern Cross provides ERCOT with funds to cover the entire estimated cost of the project; and (2) Southern Cross has signed an interconnection agreement with a TSP and the TSP gives ERCOT written notice that Southern Cross has provided it with: (a) Notice to proceed with the construction of the interconnection; and (b) The financial security required to fund the interconnection facilities:]***  Standard Form Market Participant Agreement  Between  Participant  and  Electric Reliability Council of Texas, Inc.  This Market Participant Agreement (“Agreement”), effective as of the\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between [Participant], a [State of Registration and Entity type] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).   1. **Recitals**   WHEREAS:  A. As defined in the ERCOT Protocols, Participant is a (check all that apply):  Load Serving Entity (LSE)  Qualified Scheduling Entity (QSE)  Transmission Service Provider (TSP)  Distribution Service Provider (DSP)  Congestion Revenue Right (CRR) Account Holder  Resource Entity  Energy Attribute Certificate (EAC) Account Holder  Independent Market Information System Registered Entity (IMRE)    Direct Current Tie Operator (DCTO)  B. ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region; and  C. The Parties enter into this Agreement in order to establish the terms and conditions by which ERCOT and Participant will discharge their respective duties and responsibilities under the ERCOT Protocols.  Agreements  NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, ERCOT and Participant (the “Parties”) hereby agree as follows:  Section 1. Notice.  All notices required to be given under this Agreement shall be in writing, and shall be deemed delivered three (3) days after being deposited in the U.S. mail, first class postage prepaid, registered (or certified) mail, return receipt requested, addressed to the other Party at the address specified in this Agreement or shall be deemed delivered on the day of receipt if sent in another manner requiring a signed receipt, such as courier delivery or overnight delivery service. Either Party may change its address for such notices by delivering to the other Party a written notice referring specifically to this Agreement. Notices required under the ERCOT Protocols shall be in accordance with the applicable Section of the ERCOT Protocols.  If to ERCOT:  Electric Reliability Council of Texas, Inc.  Attn: Legal Department  8000 Metropolis Drive (Building E), Suite 100  Austin, Texas 78744  Telephone: (512) 225-7000  Facsimile: (512) 225-7079  If to Participant:  [Participant Name]  [Contact Person/Dept.]  [Street Address]  [City, State Zip]  [Telephone]  [Facsimile]  Section 2. Definitions.  A. Unless herein defined, all definitions and acronyms found in the ERCOT Protocols shall be incorporated by reference into this Agreement.  B. “ERCOT Protocols” shall mean the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, and Settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.  Section 3. Term and Termination.  A. Term. The initial term ("Initial Term") of this Agreement shall commence on the Effective Date and continue until the last day of the month which is twelve (12) months from the Effective Date. After the Initial Term, this Agreement shall automatically renew for one-year terms (a "Renewal Term") unless the standard form of this Agreement contained in the ERCOT Protocols has been modified by a change to the ERCOT Protocols. If the standard form of this Agreement has been so modified, then this Agreement will terminate upon the effective date of the replacement agreement This Agreement may also be terminated during the Initial Term or the then-current Renewal Term in accordance with this Agreement.  B. Termination by Participant. Participant may, at its option, terminate this Agreement:  (1) Immediately upon the failure of ERCOT to continue to be certified by the PUCT as the Independent Organization under PURA §39.151 without the immediate certification of another Independent Organization under PURA §39.151;  (2) If the “EAC Account Holder” box is checked in Section A. of the *Recitals* section of this Agreement, Participant may, at its option, terminate this Agreement immediately if the PUCT ceases to certify ERCOT as the Entity approved by the PUCT (“Program Administrator”) for carrying out the administrative responsibilities related to the Renewable Energy Credit Program as set forth in PUC Substantive Rule 25.173(g) without the immediate certification of another Program Administrator under PURA §39.151; or  (3) For any other reason at any time upon thirty days written notice to ERCOT.  C. Effect of Termination and Survival of Terms. If this Agreement is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate, except that the rights and obligations of the Parties that have accrued under this Agreement prior to the date of termination shall survive.  Section 4. Representations, Warranties, and Covenants.  A. Participant represents, warrants, and covenants that:  (1) Participant is duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and is authorized to do business in Texas;  (2) Participant has full power and authority to enter into this Agreement and perform all obligations, representations, warranties and covenants under this Agreement;  (3) Participant’s past, present and future agreements or Participant’s organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which Participant is a party or by which its assets or properties are bound do not materially affect performance of Participant’s obligations under this Agreement;  (4) Market Participant’s execution, delivery and performance of this Agreement by Participant have been duly authorized by all requisite action of its governing body;  (5) Except as set out in an exhibit (if any) to this Agreement, ERCOT has not, within the twenty-four (24) months preceding the Effective Date, terminated for Default any Prior Agreement with Participant, any company of which Participant is a successor in interest, or any Affiliate of Participant;  (6) If any Defaults are disclosed on any such exhibit mentioned in subsection 4(A)(5), either (a) ERCOT has been paid, before execution of this Agreement, all sums due to it in relation to such Prior Agreement, or (b) ERCOT, in its reasonable judgment, has determined that this Agreement is necessary for system reliability and Participant has made alternate arrangements satisfactory to ERCOT for the resolution of the Default under the Prior Agreement;  (7) Participant has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;  (8) Participant is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;  (9) Participant is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt;  (10) Participant acknowledges that it has received and is familiar with the ERCOT Protocols; and  (11) Participant acknowledges and affirms that the foregoing representations, warranties and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on Participant’s performance of its obligations under this Agreement.  B. ERCOT represents, warrants and covenants that:  (1) ERCOT is the Independent Organization certified under PURA §39.151 for the ERCOT Region;  (2) ERCOT is duly organized, validly existing and in good standing under the laws of Texas, and is authorized to do business in Texas;  (3) ERCOT has full power and authority to enter into this Agreement and perform all of ERCOT’s obligations, representations, warranties and covenants under this Agreement;  (4) ERCOT's past, present and future agreements or ERCOT's organizational charter or bylaws, if any, or any provision of any indenture, mortgage, lien, lease, agreement, order, judgment, or decree to which ERCOT is a party or by which its assets or properties are bound do not materially affect performance of ERCOT's obligations under this Agreement;  (5) The execution, delivery and performance of this Agreement by ERCOT have been duly authorized by all requisite action of its governing body;  (6) ERCOT has obtained, or will obtain prior to beginning performance under this Agreement, all licenses, registrations, certifications, permits and other authorizations and has taken, or will take prior to beginning performance under this Agreement, all actions required by applicable laws or governmental regulations except licenses, registrations, certifications, permits or other authorizations that do not materially affect performance under this Agreement;  (7) ERCOT is not in violation of any laws, ordinances, or governmental rules, regulations or order of any Governmental Authority or arbitration board materially affecting performance of this Agreement and to which it is subject;  (8) ERCOT is not Bankrupt, does not contemplate becoming Bankrupt nor, to its knowledge, will become Bankrupt; and  (9) ERCOT acknowledges and affirms that the foregoing representations, warranties, and covenants are continuing in nature throughout the term of this Agreement. For purposes of this Section, “materially affecting performance” means resulting in a materially adverse effect on ERCOT's performance of its obligations under this Agreement.  Section 5. Participant Obligations.  A. Participant shall comply with, and be bound by, all ERCOT Protocols.  B. Participant shall not take any action, without first providing written notice to ERCOT and reasonable time for ERCOT and Market Participants to respond, that would cause a Market Participant within the ERCOT Region that is not a “public utility” under the Federal Power Act or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission.  Section 6. ERCOT Obligations.  A. ERCOT shall comply with, and be bound by, all ERCOT Protocols.  B. ERCOT shall not take any action, without first providing written notice to Participant and reasonable time for Participant and other Market Participants to respond, that would cause Participant, if Participant is not a “public utility” under the Federal Power Act, or ERCOT itself to become a “public utility” under the Federal Power Act or become subject to the plenary jurisdiction of the Federal Energy Regulatory Commission. If ERCOT receives any notice similar to that described in Section 5(B) from any Market Participant, ERCOT shall provide notice of same to Participant.  Section 7. [RESERVED]  Section 8. Default.  A. Event of Default.  (1) Failure by Participant to (i) pay when due, any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any agreement with ERCOT (“Payment Breach”), or (ii) designate/maintain an association with a QSE (if required by the ERCOT Protocols) (“QSE Affiliation Breach”), shall constitute a material breach and event of default ("Default") unless cured within one (1) Bank Business Day after ERCOT delivers written notice of the breach to Participant. Provided further that if such a material breach, regardless of whether the breaching Party cures the breach within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.  (2) A material breach other than a Payment Breach or a QSE Affiliation Breach includes any material failure by Participant to comply with the ERCOT Protocols. A material breach under this subsection shall constitute an event of Default by Participant unless cured within fourteen (14) Business Days after delivery by ERCOT of written notice of the material breach to Participant. Participant must begin work or other efforts within three (3) Business Days to cure such material breach after delivery of the breach notice by ERCOT, and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times in a 12-month period, the fourth such breach shall constitute a Default.  A material breach under this subsection shall not result in a Default if the breach cannot reasonably be cured within fourteen (14) Business Days, and Participant:  (a) Promptly provides ERCOT with written notice of the reasons why the breach cannot reasonably be cured within fourteen (14) Business Days;  (b) Begins to work or other efforts to cure the breach within three (3) Business Days after ERCOT’s delivery of the notice to Participant; and  (c) Prosecutes the curative work or efforts with reasonable diligence until the curative work or efforts are completed.  (3) Bankruptcy by Participant, except for the filing of a petition in involuntary bankruptcy or similar involuntary proceedings, that is dismissed within 90 days thereafter, shall constitute an event of Default.  (4) Except as otherwise excused herein, a material breach of this Agreement by ERCOT, including any material failure by ERCOT to comply with the ERCOT Protocols, other than a Payment Breach, shall constitute a Default by ERCOT unless cured within fourteen (14) Business Days after delivery by Participant of written notice of the material breach to ERCOT. ERCOT must begin work or other efforts within three (3) Business Days to cure such material breach after delivery by Participant of written notice of such material breach by ERCOT and must prosecute such work or other efforts with reasonable diligence until the breach is cured. Provided further that if a material breach, regardless of whether such breach is cured within the allotted time after notice of the material breach, occurs more than three (3) times within a 12-month period, the fourth such breach shall constitute a Default.  (5) If, due to a Force Majeure Event, a Party is in breach with respect to any obligation hereunder, such breach shall not result in a Default by that Party.  B. Remedies for Default.  (1) ERCOT's Remedies for Default. In the event of a Default by Participant, ERCOT may pursue any remedies ERCOT has under this Agreement, at law, or in equity, subject to the provisions of Section 10: Dispute Resolution of this Agreement. In the event of a Default by Participant, if the ERCOT Protocols do not specify a remedy for a particular Default, ERCOT may, at its option, upon written notice to Participant, immediately terminate this Agreement, with termination to be effective upon the date of delivery of notice. In the event of Participant’s bankruptcy, Participant waives any right to challenge ERCOT’s right to set off amounts ERCOT owes to Participant by the amount of any sums owed by Participant to ERCOT, including any amounts owed pursuant to the operation of the Protocols.  (2) Participant's Remedies for Default.  (a) Unless otherwise specified in this Agreement or in the ERCOT Protocols, and subject to the provisions of Section 10: Dispute Resolution of this Agreement in the event of a Default by ERCOT, Participant's remedies shall be limited to:  (i) Immediate termination of this Agreement upon written notice to ERCOT;  (ii) Monetary recovery in accordance with the Settlement procedures set forth in the ERCOT Protocols; and  (iii) Specific performance.  (b) However, in the event of a material breach by ERCOT of any of its representations, warranties or covenants, Participant's sole remedy shall be immediate termination of this Agreement upon written notice to ERCOT.  (3) A Default or breach of this Agreement by a Party shall not relieve either Party of the obligation to comply with the ERCOT Protocols.  C. Force Majeure.  (1) If, due to a Force Majeure Event, either Party is in breach of this Agreement with respect to any obligation hereunder, such Party shall take reasonable steps, consistent with Good Utility Practice, to remedy such breach. If either Party is unable to fulfill any obligation by reason of a Force Majeure Event, it shall give notice and the full particulars of the obligations affected by such Force Majeure Event to the other Party in writing or by telephone (if followed by written notice) as soon as reasonably practicable, but not later than fourteen (14) calendar days, after such Party becomes aware of the event. A failure to give timely notice of the Force Majeure event shall constitute a waiver of the claim of Force Majeure Event. The Party experiencing the Force Majeure Event shall also provide notice, as soon as reasonably practicable, when the Force Majeure Event ends.  (2) Notwithstanding the foregoing, a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments or of any consequences of non-performance pursuant to the ERCOT Protocols or under this Agreement, except that the excuse from Default provided by subsection 8(A)(5) above is still effective.  D. Duty to Mitigate. Except as expressly provided otherwise herein, each Party shall use commercially reasonable efforts to mitigate any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.  Section 9. Limitation of Damages and Liability and Indemnification.  A. EXCEPT AS EXPRESSLY LIMITED IN THIS AGREEMENT OR THE ERCOT PROTOCOLS, ERCOT OR PARTICIPANT MAY SEEK FROM THE OTHER, THROUGH APPLICABLE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THE ERCOT PROTOCOLS, ANY MONETARY DAMAGES OR OTHER REMEDY OTHERWISE ALLOWABLE UNDER TEXAS LAW, AS DAMAGES FOR DEFAULT OR BREACH OF THE OBLIGATIONS UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY THAT MAY OCCUR, IN WHOLE OR IN PART, AS A RESULT OF A DEFAULT UNDER THIS AGREEMENT, A TORT, OR ANY OTHER CAUSE, WHETHER OR NOT A PARTY HAD KNOWLEDGE OF THE CIRCUMSTANCES THAT RESULTED IN THE SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR INJURY, OR COULD HAVE FORESEEN THAT SUCH DAMAGES OR INJURY WOULD OCCUR.  B. With respect to any dispute regarding a Default or breach by ERCOT of its obligations under this Agreement, ERCOT expressly waives any Limitation of Liability to which it may be entitled under the Charitable Immunity and Liability Act of 1987, Tex. Civ. Prac. & Rem. Code §84.006, or successor statute.  C. The Parties have expressly agreed that, other than subsections A and B of this Section, this Agreement shall not include any other limitations of liability or indemnification provisions, and that such issues shall be governed solely by applicable law, in a manner consistent with the Choice of Law and Venue subsection of this Agreement, regardless of any contrary provisions that may be included in or subsequently added to the ERCOT Protocols (outside of this Agreement).  D. The Independent Market Monitor (IMM), and its directors, officers, employees, and agents, shall not be liable to any person or Entity for any act or omission, other than an act or omission constituting gross negligence or intentional misconduct, including but not limited to liability for any financial loss, loss of economic advantage, opportunity cost, or actual, direct, indirect, or consequential damages of any kind resulting from or attributable to any such act or omission of the IMM, as long as such act or omission arose from or is related to matters within the scope of the IMM’s authority arising under or relating to PURA §39.1515 and PUC Subst. R. 25.365, Independent Market Monitor.  Section 10. Dispute Resolution.  A. In the event of a dispute, including a dispute regarding a Default, under this Agreement, Parties to this Agreement shall first attempt resolution of the dispute using the applicable dispute resolution procedures set forth in the ERCOT Protocols.  B. In the event of a dispute, including a dispute regarding a Default, under this Agreement, each Party shall bear its own costs and fees, including, but not limited to attorneys' fees, court costs, and its share of any mediation or arbitration fees.  Section 11. Miscellaneous.  A. Choice of Law and Venue. Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into and performable solely in Texas and, with the exception of matters governed exclusively by federal law, shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. Neither Party waives primary jurisdiction as a defense; provided that any court suits regarding this Agreement shall be brought in a state or federal court located within Travis County, Texas, and the Parties hereby waive any defense of forum non-conveniens, except defenses under Tex. Civ. Prac. & Rem. Code §15.002(b).  B. Assignment.  (1) Notwithstanding anything herein to the contrary, a Party shall not assign or otherwise transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, except that a Party may assign or transfer its rights and obligations under this Agreement without the prior written consent of the other Party (if neither the assigning Party or the assignee is then in Default of any Agreement with ERCOT):  (a) Where any such assignment or transfer is to an Affiliate of the Party; or  (b) Where any such assignment or transfer is to a successor to or transferee of the direct or indirect ownership or operation of all or part of the Party, or its facilities; or  (c) For collateral security purposes to aid in providing financing for itself, provided that the assigning Party will require any secured party, trustee or mortgagee to notify the other Party of any such assignment. Any financing arrangement entered into by either Party pursuant to this Section will provide that prior to or upon the exercise of the secured party’s, trustee’s or mortgagee’s assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the other Party of the date and particulars of any such exercise of assignment right(s). If requested by the Party making any such collateral assignment to a Financing Person, the other Party shall execute and deliver a consent to such assignment containing customary provisions, including representations as to corporate authorization, enforceability of this Agreement and absence of known Defaults, notice of material breach pursuant to Section 8(A), notice of Default, and an opportunity for the Financing Person to cure a material breach pursuant to Section 8(A) prior to it becoming a Default.  (2) An assigning Party shall provide prompt written notice of the assignment to the other Party. Any attempted assignment that violates this Section is void and ineffective. Any assignment under this Agreement shall not relieve either Party of its obligations under this Agreement, nor shall either Party’s obligations be enlarged, in whole or in part, by reason thereof.  C. No Third-Party Beneficiary. Except with respect to the rights of the Financing Persons in Section 11(B), (a) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, (b) no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (c) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder. Nothing in this Agreement shall create a contractual relationship between one Party and the customers of the other Party, nor shall it create a duty of any kind to such customers.  D. No Waiver. Parties shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party unless such waiver, modification or excuse is in writing and signed by an authorized officer of such Party. The failure by or delay of either Party in enforcing or exercising any of its rights under this Agreement shall (a) not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, and (b) not prevent a subsequent enforcement or exercise of such right. Each Party shall be entitled to enforce the other Party’s covenants and promises contained herein, notwithstanding the existence of any claim or cause of action against the enforcing Party under this Agreement or otherwise.  E. Headings. Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties’ intentions with respect thereto.  F. Severability. In the event that any of the provisions, or portions or applications thereof, of this Agreement is finally held to be unenforceable or invalid by any court of competent jurisdiction, that determination shall not affect the enforceability or validity of the remaining portions of this Agreement, and this Agreement shall continue in full force and effect as if it had been executed without the invalid provision; provided, however, if either Party determines, in its sole discretion, that there is a material change in this Agreement by reason thereof, the Parties shall promptly enter into negotiations to replace the unenforceable or invalid provision with a valid and enforceable provision. If the Parties are not able to reach an agreement as the result of such negotiations within fourteen (14) days, either Party shall have the right to terminate this Agreement on three (3) days written notice.  G. Entire Agreement. Any exhibits attached to this Agreement are incorporated into this Agreement by reference and made a part of this Agreement as if repeated verbatim in this Agreement. This Agreement represents the Parties' final and mutual understanding with respect to its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement. An agreement, statement, or promise not contained in this Agreement is not valid or binding.  H. Amendment. The standard form of this Agreement may only be modified through the procedure for modifying ERCOT Protocols described in the ERCOT Protocols. Any changes to the terms of the standard form of this Agreement shall not take effect until a new Agreement is executed between the Parties.  I. ERCOT's Right to Audit Participant. Participant shall keep detailed records for a period of three years of all activities under this Agreement giving rise to any information, statement, charge, payment or computation delivered to ERCOT under the ERCOT Protocols. Such records shall be retained and shall be available for audit or examination by ERCOT as hereinafter provided. ERCOT has the right during Business Hours and upon reasonable written notice and for reasonable cause to examine the records of Participant as necessary to verify the accuracy of any such information, statement, charge, payment or computation made under this Agreement. If any such examination reveals any inaccuracy in any such information, statement, charge, payment or computation, the necessary adjustments in such information, statement, charge, payment, computation, or procedures used in supporting its ongoing accuracy will be promptly made.  J. Participant's Right to Audit ERCOT. Participant's right to data and audit of ERCOT shall be as described in the ERCOT Protocols and shall not exceed the rights described in the ERCOT Protocols.  K. Further Assurances. Each Party agrees that during the term of this Agreement it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other Party to permit performance of this Agreement.  L. Conflicts. This Agreement is subject to applicable federal, state, and local laws, ordinances, rules, regulations, orders of any Governmental Authority and tariffs. Nothing in this Agreement may be construed as a waiver of any right to question or contest any federal, state and local law, ordinance, rule, regulation, order of any Governmental Authority, or tariff. In the event of a conflict between this Agreement and an applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff, the applicable federal, state, and local law, ordinance, rule, regulation, order of any Governmental Authority or tariff shall prevail, provided that Participant shall give notice to ERCOT of any such conflict affecting Participant. In the event of a conflict between the ERCOT Protocols and this Agreement, the provisions expressly set forth in this Agreement shall control.  M. No Partnership. This Agreement may not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party has any right, power, or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.  N. Construction. In this Agreement, the following rules of construction apply, unless expressly provided otherwise or unless the context clearly requires otherwise:  (1) The singular includes the plural, and the plural includes the singular.  (2) The present tense includes the future tense, and the future tense includes the present tense.  (3) Words importing any gender include the other gender.  (4) The word “shall” denotes a duty.  (5) The word “must” denotes a condition precedent or subsequent.  (6) The word “may” denotes a privilege or discretionary power.  (7) The phrase “may not” denotes a prohibition.  (8) References to statutes, tariffs, regulations or ERCOT Protocols include all provisions consolidating, amending, or replacing the statutes, tariffs, regulations or ERCOT Protocols referred to.  (9) References to “writing” include printing, typing, lithography, and other means of reproducing words in a tangible visible form.  (10) The words “including,” “includes,” and “include” are deemed to be followed by the words “without limitation.”  (11) Any reference to a day, week, month or year is to a calendar day, week, month or year unless otherwise indicated.  (12) References to articles, Sections (or subdivisions of Sections), exhibits, annexes or schedules are to this Agreement, unless expressly stated otherwise.  (13) Unless expressly stated otherwise, references to agreements, ERCOT Protocols and other contractual instruments include all subsequent amendments and other modifications to the instruments, but only to the extent the amendments and other modifications are not prohibited by this Agreement.  (14) References to persons or entities include their respective successors and permitted assigns and, for governmental entities, entities succeeding to their respective functions and capacities.  (15) References to time are to Central Prevailing Time.  O. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.  SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Agreement.  ***Electric Reliability Council of Texas, Inc.:***  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  ***Participant:***  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Market Participant Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Market Participant DUNS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**ERCOT Nodal Protocols**

**Section 22**

**Attachment C: Amendment to Standard Form Market Participant Agreement**

**TBD**

Amendment to

Standard Form Market Participant Agreement

Between

[Insert Participant]

and

Electric Reliability Council of Texas, Inc.

This AMENDMENT to the Standard Form Market Participant Agreement (“Amendment”), effective as of the \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between [Insert Participant], a [Insert State of Registration and Entity Type] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).

Recitals

WHEREAS, Participant and ERCOT entered into a Standard Form Market Participant Agreement (SFA) dated      ; and

WHEREAS, Participant and ERCOT wish to amend that SFA to include Market Participant registrations designated below.

NOW, THEREFORE, Participant and ERCOT agree that paragraph A in the “Recitals” section of that SFA shall be deleted in its entirety and replaced with the following:

A. As defined in the ERCOT Protocols, Participant is a (check all that apply):

Load Serving Entity (LSE)

Qualified Scheduling Entity (QSE)

Transmission Service Provider (TSP)

Distribution Service Provider (DSP)

Congestion Revenue Right (CRR) Account Holder

Resource Entity

Energy Attribute Certificate (EAC) Account Holder

This Amendment modifies the existing SFA only to include those Market Participant registrations designated above by Participant.

This Amendment in no way alters the terms and conditions of the existing SFA other than as specifically set forth herein.

SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Amendment to the Standard Form Market Participant Agreement.

***Electric Reliability Council of Texas, Inc.:***

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Participant:***

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Date:

Market Participant Name:

Market Participant DUNS:

|  |
| --- |
| ***[NPRR857: Replace Section 22 Attachment C above with the following upon system implementation and satisfying the following conditions: (1) Southern Cross provides ERCOT with funds to cover the entire estimated cost of the project; and (2) Southern Cross has signed an interconnection agreement with a TSP and the TSP gives ERCOT written notice that Southern Cross has provided it with: (a) Notice to proceed with the construction of the interconnection; and (b) The financial security required to fund the interconnection facilities:]***  Amendment to  Standard Form Market Participant Agreement  Between  [Participant]  and  Electric Reliability Council of Texas, Inc.  This AMENDMENT to the Standard Form Market Participant Agreement (“Amendment”), effective as of the \_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”), is entered into by and between [Participant], a [State of Registration and Entity Type] (“Participant”) and Electric Reliability Council of Texas, Inc., a Texas non-profit corporation (“ERCOT”).  Recitals  WHEREAS, Participant and ERCOT entered into a Standard Form Market Participant Agreement (SFA) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_; and  WHEREAS, Participant and ERCOT wish to amend that SFA to include Market Participant registrations designated below.  NOW, THEREFORE, Participant and ERCOT agree that paragraph A in the “Recitals” section of that SFA shall be deleted in its entirety and replaced with the following:  A. As defined in the ERCOT Protocols, Participant is a (check all that apply):  Load Serving Entity (LSE)  Qualified Scheduling Entity (QSE)  Transmission Service Provider (TSP)  Distribution Service Provider (DSP)  Congestion Revenue Right (CRR) Account Holder  Resource Entity  Energy Attribute Certificate (EAC) Account Holder  Direct Current Tie Operator (DCTO)  This Amendment modifies the existing SFA only to include those Market Participant registrations designated above by Participant.  This Amendment in no way alters the terms and conditions of the existing SFA other than as specifically set forth herein.  SIGNED, ACCEPTED AND AGREED TO by each undersigned signatory who, by signature hereto, represents and warrants that he or she has full power and authority to execute this Amendment to the Standard Form Market Participant Agreement.  ***Electric Reliability Council of Texas, Inc.:***  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  ***Participant:***  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Market Participant Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Market Participant DUNS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |