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| NPRR Number | [1194](https://www.ercot.com/mktrules/issues/NPRR1194) | NPRR Title | Wholesale Storage Load Auxiliary Netting |
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| Date | October 6, 2023 |
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| Submitter’s Information |
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| Market Segment | Not applicable |

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| Comments |

ERCOT submits these comments in response to comments submitted by South Texas Electric Cooperative, Inc. (STEC) regarding Nodal Protocol Revision Request (NPRR) 1194 on September 12, 2023.

STEC claims that state law expressly prohibits the netting of discharged energy with auxiliary Load from an Energy Storage Resource (ESR) qualified for Wholesale Storage Load (WSL) treatment. STEC misconstrues the Public Utility Regulatory Act (PURA) and the Rulemaking on Energy Storage Issues issued by the Public Utility Commission of Texas (PUC) in Project No. 39917. The PUC’s Order in Project No. 39917 makes clear that energy withdrawn from the grid for wholesale storage shall receive WSL treatment, and energy withdrawn from the grid to power auxiliary Load should receive retail treatment.[[1]](#footnote-1) The Project No. 39917 Order does not state that stored energy injected back into the grid should receive retail treatment when it is used to power an ESR’s auxiliary Load.

STEC further argues that a memo filed by PUC staff in Project No. 54224 relating to Distributed Energy Resources (DERs), including ESRs, should be interpreted to prohibit the netting of discharged energy with auxiliary Load from an ESR qualified for WSL. STEC points to Commission staff’s statement that “[t]he auxiliary load does not receive the benefits described in 16 TAC § 25.501(m).”[[2]](#footnote-2) STEC has taken this quotation out of context. Staff’s memo provides:

“Wholesale storage load is not defined in Commission rules but has been defined at ERCOT to include **the value of energy withdrawal associated with the ESR charging, but not the auxiliary load** (load that contributes to maintaining the resource or serving additional load located with the resource). The auxiliary load does not receive the benefits described in 16 TAC § 25.501(m).”[[3]](#footnote-3)

The above paragraph, viewed in its entirety, supports the following:

1. The context of the sentence indicates that Commission staff was referring to withdrawal, not injection, in interpreting 16 TAC § 25.501(m). We agree that auxiliary Load that is metered during *withdrawal* is retail Load. However, STEC has provided no compelling grounds identifying to why ESRs should be treated differently from other generators when they *inject* power into the grid. As discussed in ERCOT’s Comments on NPRR 1194 filed on September 7, 2023, PURA § 35.152(a) categorizes ESR storage equipment and facilities as generation assets when they are intended to be used to sell energy or ancillary services at wholesale, and Section 35.152(b)(3) further provides that the owner or operator of ESR equipment or facilities is entitled to “use the equipment or facilities to sell electricity or ancillary services at wholesale in a manner consistent with the provisions of this title and commission rules **applicable to a power generation company or an exempt wholesale generator**.” Thus, treating ESRs like other generators, consistent with state law, would mean allowing them to self-serve auxiliary Load while exporting to the grid.
2. Staff’s comment in the Project No. 54224 memo only describes how WSL is treated under ERCOT rules. In the paragraph that STEC has quoted, Commission staff were not offering guidance on how 16 TAC § 25.501(m) should be interpreted. They merely identified, consistent with what ERCOT noted in its September 7 comments, that ERCOT rules allow batteries to serve their own auxiliary Load when exporting, without assigning retail treatment to that Load, as is the case for other generators. This is consistent with PURA § 35.152 and the PUC’s determination in its Order adopting 16 TAC § 25.501(m) that “a storage facility is entitled to be treated like other generation facilities in the *sale* of energy and ancillary services at wholesale.”[[4]](#footnote-4)

STEC asserts that an ESR that serves its own auxiliary Load when exporting power to the grid unlawfully provides retail electric service to itself in violation of PURA. This argument ignores two important exemptions in PURA that exclude such an ESR from the definition of a retail electric utility.

STEC claims that the definition of “retail electric utility” in PURA § 37.001(3) supports its assertion that an ESR in a netting arrangement unlawfully provides retail electric service to itself without a certificate of convenience and necessity (CCN).[[5]](#footnote-5) However, an ESR in this instance falls within two exclusions to the definition of “electric utility”: the power generation company exclusion and the self-service exclusion.[[6]](#footnote-6)

An ESR that sells power at wholesale would fall within the scope of PURA’s definition of a “power generation company,” which is defined as follows:

“[A] person, including a person who owns or operates a distributed natural gas generation facility, that:

1. **generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which Subchapter E, Chapter 35, applies;**
2. does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of ‘electric utility’ under this section; and
3. does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.”[[7]](#footnote-7)

An ESR, in such circumstances, does not offer service to a retail customer for compensation, but instead withdraws and stores energy to sell later at wholesale. Like other power generation companies that generate electricity to sell at wholesale, an ESR must pay retail charges on electricity that is withdrawn from the grid to power its auxiliary Load. However, when the ESR subsequently re-generates stored energy and exports that energy to the grid to be sold at wholesale, the ESR should be treated like other generators and allowed to incidentally power its auxiliary Load with that exported power, without being required to pay retail charges.

This is further supported by PURA’s self-service exception to the definition of “electric utility.” This exception provides that a person is excluded from the definition of an “electric utility” if the person is not otherwise an electric utility and “**furnishes an electric service or commodity only to itself**, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.”[[8]](#footnote-8) Since an ESR that sells electricity at wholesale falls within the definition of a power generation company, it clearly meets the requirement that it must not otherwise be an electric utility in order to qualify for the self-use exception. An ESR that serves its own auxiliary Load while exporting power to the grid also satisfies the requirement that it must furnish electric service only to itself in order to qualify for the self-use exception.

In response to STEC’s claim that batteries are different from other Generation Resources, ERCOT agrees that there are material ways in which ESRs are unlike other Generation Resources, which ERCOT has recognized in its recent comments on NPRR 1186. ERCOT rules can treat ESRs differently based on differences that are material to the market. However, STEC has presented no compelling reason as to why ESRs should be treated differently from other generators in regard to self-service. STEC’s assertion that ESRs are subject to specific statutes regarding matters in which they *are* materially different from other generators is irrelevant in an instance where no material difference has been identified.

Lastly, ERCOT notes that there are now 48 ESR sites in the ERCOT region that have been permitted to net auxiliary Load with generation when exporting energy to the grid.

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| Revised Cover Page Language |

None

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| Revised Proposed Protocol Language |

None

1. *See Rulemaking on Energy Storage Issues,* PUC Project 39917, Order Adopting Amendments to § 25.192 and § 25.501 as Approved at the March 7, 2012 Open Meeting at Pages 12-14 (Mar. 29, 2012). [↑](#footnote-ref-1)
2. NPRR 1194, STEC Comments, September 12, 2023 (citing *Cost Recovery for Services to Distributed Energy Resources (DERs)*, Project No. 54224, Commission Staff Memorandum at 6 (Mar. 16, 2023)). [↑](#footnote-ref-2)
3. *Cost Recovery for Services to Distributed Energy Resources (DERs)*, Project No. 54224, Commission Staff Memorandum at 7 (Mar. 16, 2023) (emphasis added). [↑](#footnote-ref-3)
4. *Rulemaking on Energy Storage Issues,* PUC Project 39917, Order Adopting Amendments to § 25.192 and § 25.501 as Approved at the March 7, 2012 Open Meeting at Page 12 (Mar. 29, 2012). [↑](#footnote-ref-4)
5. Tex. Util. Code § 37.001(3) defines a “retail electric utility” in part to mean “a person…that operates, maintains, or controls in this state a facility **to provide retail electric utility service**” (emphasis added). This should be read to exclude wholesale service. The definition of “retail electric utility” in Chapter 37 should be understood to include, as a subpart, the definition of “electric utility” in Tex. Util. Code § 31.002(6). This is supported by the definition of “electric utility” in Tex. Util. Code § 37.001(2), which simply states that the term “electric utility” includes an electric cooperative for purposes of Chapter 37, without further defining the term. The lack of further definition of “electric utility” in Chapter 37 indicates that Chapter 31’s more detailed definition of “electric utility” applies in Chapter 37 (with the limited addition of “electric cooperative” for purposes of that chapter only). [↑](#footnote-ref-5)
6. *See* Tex. Util. Code §§ 31.002(6)(J)(i), 31.002(10). [↑](#footnote-ref-6)
7. Tex. Util. Code § 31.002(10) (with emphasis added). [↑](#footnote-ref-7)
8. Tex. Util. Code § 31.002(6)(J)(i) (emphasis added). [↑](#footnote-ref-8)