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| NPRR Number | [1243](https://www.ercot.com/mktrules/issues/NPRR1243) | NPRR Title | Revision to Requirements for Notice and Release of Protected Information or ECEII to Certain Governmental Authorities |
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| Date | | October 14, 2024 | |
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| Market Segment | | Investor-Owned Utility (IOU) | |

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| Comments |

Oncor provides these comments to Nodal Protocol Revision Request (NPRR) 1243, Revision to Requirements for Notice and Release of Protected Information or ECEII to Certain Governmental Authorities, on top of the 9/17/24 Reliant Energy comments.   
  
Oncor does not oppose the inclusion of the Federal Energy Regulatory Commission (FERC) in the existing list of regulatory bodies that appears in paragraphs (4) and (5) to Section 1.3.4, Protecting Disclosures to the PUCT, FERC, CFTC, Governmental Cybersecurity Oversight Agencies, and Other Governmental Authorities, and paragraph (1)(j) of Section 1.3.6, Exceptions. However, Oncor has concerns with the proposed revisions to paragraph (1) of Section 1.3.5, Notice Before Permitted Disclosure, and some of the proposed revisions to paragraph (1)(j) of Section 1.3.6 for at least two reasons.  
  
First, these proposed revisions remove all requirements that ERCOT notify the Disclosing Party before ERCOT provides the Disclosing Party’s Protected Information or ERCOT Critical Energy Infrastructure Information (ECEII) to the entities identified by NPRR1243. Oncor does not agree that it is “unnecessary” for ERCOT to provide notice to Market Participants before ERCOT’s disclosure of Protected Information/ECEII to FERC, North American Reliability Corporation (NERC), the NERC Regional Entity (Texas Reliability Entity (TRE)) and Governmental Cybersecurity Oversight Agencies.

* Oncor believes it is imperative that a Transmission and/or Distribution Service Provider (TDSP) be notified when its Protected Information/ECEII is to be provided to other entities so that the TDSP: (1) can have an opportunity to seek to stop ERCOT’s provision of its Protected Information/ECEII to other entities if the TDSP determines it is necessary either to ensure that the Protected Information/ECEII is properly identified on its face or to assert that it must be provided in a specific manner; and (2) can be aware of the Protected Information/ECEII in the other entity’s possession, so that if it is later discovered that the Protected Information/ECEII needs to be corrected or updated, the TDSP can ensure that corrected or updated information is provided to all of the entities that have the no-longer accurate information – and not just ERCOT.
* As an alternative to the revisions proposed in NPRR1243, Oncor sees value in adding a Protocol provision that would allow ERCOT to disclose Protected Information/ECEII to other regulatory agencies without notifying individual Disclosing Parties when performing such individual notice would be impractical or unduly burdensome. To address this, Oncor proposes that the existing language remain in effect, and a new requirement be added to paragraph (1)(j) of Section 1.3.6, that would require ERCOT to publicly post and maintain on its website the categories of Protected Information/ECEII it is disclosing to FERC, NERC, and TRE in lieu of individually notifying the Disclosing Parties that provided this Protected Information/ECEII to ERCOT.

Second, the proposed revisions allow ERCOT, without notice to the Disclosing Party, to disclose to FERC, NERC, or TRE *any* of the Disclosing Party’s Protected Information and ECEII *even if that information is not required for compliance with any applicable NERC or NERC Regional Entity Reliability Standard*. Oncor submits these comments to support restoring the requirement in paragraph (1)(j) of Section 1.3.6, for ERCOT only to disclose PI/ECEII to FERC, NERC, or TRE if the disclosure is required for adherence to a regulatory requirement. Oncor also proposes to clarify that “applicable regulatory requirement” in this case means requirements imposed by FERC pursuant to the Federal Power Act.

* FERC has authority under Federal Power Act Section 215(b) *Jurisdiction and Applicability* over the Electric Reliability Organization certified by the FERC, any regional entities, and all users, owners, and operators of the bulk-power system “***for purposes of approving reliability standards established under this section and enforcing compliance with this section.***”Additionally, FERC may direct ERCOT Market Participants to provide interconnections pursuant to Sections 210, 211, and 212 of the Federal Power Act.Thus, the only jurisdiction that FERC has with respect to TDSPs operating within ERCOT is whether or not they are compliant with the applicable NERC Reliability Standards or FERC orders issued pursuant to Sections 210, 211, and/or 212. FERC does not have jurisdiction over any other aspects of an ERCOT TDSP’s business except the transmission of electricity outside of Texas. Thus, FERC should not be able to request and receive from ERCOT any or all Protected Information/CEII that Oncor provided to ERCOT that is unrelated to a TDSP’s compliance with FERC’s approved Reliability Standards applicable to the TDSP or interconnection orders issued pursuant to Sections 210, 211, and/or 212.

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| Proposed Protocol Language Revision |

1.3.4 Protecting Disclosures to the PUCT, FERC, CFTC, Governmental Cybersecurity Oversight Agencies, and Other Governmental Authorities

(1) Any disclosure that a Receiving Party makes to the PUCT must be made under applicable PUCT rules. For any disclosure of Protected Information or ECEII to the PUCT outside the scope of subsection (e) of P.U.C. Subst. R. 25.362, Electric Reliability Council of Texas (ERCOT) Governance, the Receiving Party must file that Protected Information or ECEII as confidential pursuant to subsection (d) of P.U.C. Proc. R. 22.71, Filing of Pleadings, Documents, and Other Materials.

(2) For any disclosure of Protected Information to the Commodity Futures Trading Commission (CFTC) pursuant to a request made under the CFTC’s authority in accordance with the Commodity Exchange Act and the CFTC’s regulations, ERCOT, as the Receiving Party, shall timely submit to the CFTC a written request for confidential treatment of the Protected Information in accordance with the applicable provisions of the Commodity Exchange Act and CFTC regulations.

(3) Before making a disclosure of Protected Information involving a Cybersecurity Incident to a Governmental Cybersecurity Oversight Agency or delegated entity for the purpose of ensuring the safety and/or security of the ERCOT System or ERCOT’s ability to perform functions of an independent organization under the Public Utility Regulatory Act (PURA), ERCOT, as the Receiving Party, will obtain adequate assurance from such Governmental Cybersecurity Oversight Agency that it will maintain the confidentiality of Protected Information.

(4) Before making a disclosure under order of a Governmental Authority other than the PUCT, the Federal Energy Regulatory Commission (FERC), and the CFTC, the Receiving Party or Creating Party shall seek a protective order from such Governmental Authority to protect the confidentiality of Protected Information or ECEII.

(5) Before making a disclosure under order of a Governmental Authority other than the PUCT, FERC, CFTC, or a Governmental Cybersecurity Oversight Agency to ensure the safety and/or security of the ERCOT System or ERCOT’s ability to perform the functions of an independent organization under PURA, the Receiving Party shall seek a protective order from such Governmental Authority to protect the confidentiality of Protected Information.

(6) Nothing in this Section authorizes any disclosure of Protected Information or ECEII; this Section merely creates requirements on disclosures that are authorized under other sections of these Protocols.

1.3.5 Notice Before Permitted Disclosure

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

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

(3) Notwithstanding any other provision in these Protocols, ERCOT may provide notice of any one or more categories of Protected Information and ECEII it discloses as the Receiving Party under paragraph (1)(j) of Section 1.3.6 by publicly posting and maintaining on the ERCOT website a list of such categories in lieu of individually notifying each Disclosing Party.

(a) Before disclosing Protected Information or ECEII under a new category that ERCOT proposes to add to the list, ERCOT will issue a Market Notice describing the new category of Protected Information or ECEII, identifying the intended date of disclosure, and providing notice that the list will be updated.

(b) The Market Notice will be issued as far in advance of the disclosure as practicable under the circumstances or at least 10 Business Days before the disclosure, whichever is shorter.

1.3.6 Exceptions

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

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

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

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

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

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

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

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

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

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

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

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

(j) To FERC, the North American Electric Reliability Corporation (NERC), or the NERC Regional Entity if requested under the authority of the Federal Power Act Section 215 , but any Receiving Party or Creating Party must make reasonable efforts to restrict public access to the disclosed Protected Information or ECEII. This exception does not limit FERC’s, NERC’s, or the NERC Regional Entity’s access to Protected Information or ECEII as it existed on September 1, 2024; or

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

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

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

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

(iv) Resource protective device settings and status;

(v) Data from COPs;

(vi) Resource Outage schedule information; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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