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| NPRR Number | [1264](https://www.ercot.com/mktrules/issues/NPRR1264) | NPRR Title | Creation of a New Energy Attribute Certificate Program |
| Date Posted | December 19, 2024 |
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| Requested Resolution  | Normal |
| Nodal Protocol Sections Requiring Revision  | 1.3.1.1, Items Considered Protected Information2.1, Definitions2.2, Acronyms and Abbreviations14, State Of Texas Renewable Energy Credit Trading Program14.1, Overview14.2, Duties of ERCOT14.2.1, Site Visits14.3, Creation of Renewable Energy Credit Accounts and Attributes of RenewableEnergy Credits14.3.1, Creation of Renewable Energy Credit Accounts14.3.2, Attributes of Renewable Energy Credits and Compliance Premiums14.4, Registration to Become a Renewable Energy Credit Generator or Renewable Energy Credit Aggregator14.5.1, Renewable Energy Credit Generators and Renewable Energy Credit Offset Generators14.5.2, Retail Entities (delete)14.5.3, End-Use Customers (delete)14.6, Awarding of Renewable Energy Credits14.6.2, Awarding of Compliance Premiums (delete)14.7, Transfer of Renewable Energy Credits or Compliance Premiums Between Parties14.8, Renewable Energy Credit Offsets14.9, Allocation of Statewide Solar Renewable Portfolio Standard Requirement Among Retail Entities14.9.1, Annual Capacity Targets (delete)14.9.2, Capacity Conversion Factor (delete)14.9.3, Statewide Solar Renewable Portfolio Standard Requirement (delete)14.9.3.1, Preliminary Solar Renewable Portfolio Standard Requirement for Retail Entities (delete)14.9.4, Application of Offsets - Adjusted Solar Renewable Portfolio Standard Requirement (delete)14.9.5, Final Solar Renewable Portfolio Standard Requirement (delete)14.10, Retiring of Renewable Energy Credits or Compliance Premiums14.10.1, Mandatory Retirement (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 Information14.12, Third-Party Certification Data Fields (new)14.13, Submit Annual Report to Public Utility Commission of Texas16.7, Registration of Renewable Energy Credit Account Holders21.2, Submission of a Nodal Protocol Revision Request or System Change RequestSection 22, Attachment A, Standard Form Market Participant AgreementSection 22, Attachment C, Amendment to Standard Form Market Participant Agreement |
| Related Documents Requiring Revision/Related Revision Requests | Commercial Operations Market Guide Revision Request (COPMGRR) 051, Related to NPRR1264, Creation of a New Energy Attribute Certificate ProgramNodal Operating Guide Revision Request (NOGRR) 273, Related to NPRR1264, Creation of a New Energy Attribute Certificate ProgramPlanning Guide Revision Request (PGRR) 123, Related to NPRR1264, Creation of a New Energy Attribute Certificate ProgramResource Registration Glossary Revision Request (RRGRR) 038, Related to NPRR1264, Creation of a New Energy Attribute Certificate ProgramRetail Market Guide Revision Request (RMGRR) 182, Related to NPRR1264, Creation of a New Energy Attribute Certificate ProgramSettlement Metering Operating Guide Revision Request (SMOGRR) 031, Related to NPRR1264, Creation of a New Energy Attribute Certificate ProgramVerifiable Cost Manual Revision Request (VCMRR) 043, Related to NPRR1264, Creation of a New Energy Attribute Certificate Program |
| 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.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.This NPRR also allows ERCOT to allow a third-party administrator to administer the program.Finally, this NPRR adds a robust programmatic interface to EAC trading and accounting. |
| Reason for Revision |  [Strategic Plan](https://www.ercot.com/files/docs/2023/08/25/ERCOT-Strategic-Plan-2024-2028.pdf) Objective 1 – Be an industry leader for grid reliability and resilience [Strategic Plan](https://www.ercot.com/files/docs/2023/08/25/ERCOT-Strategic-Plan-2024-2028.pdf) Objective 2 – Enhance the ERCOT region’s economic competitiveness with respect to trends in wholesale power rates and retail electricity prices to consumers [Strategic Plan](https://www.ercot.com/files/docs/2023/08/25/ERCOT-Strategic-Plan-2024-2028.pdf) Objective 3 – Advance ERCOT, Inc. as an independent leading industry expert and an employer of choice by fostering innovation, investing in our people, and emphasizing the importance of our mission General system and/or process improvement(s) Regulatory requirements ERCOT Board/PUCT Directive*(please select ONLY ONE – if more than one apply, please select the ONE that is most relevant)* |
| Justification of Reason for Revision and Market Impacts | Following the passage of House Bill 1500, the market for RECs will be voluntary after the expiration of the Solar Renewable Portfolio Standard (SRPS). P.U.C. SUBST. R. 25.173, Renewable Energy Credit Program, allows ERCOT to add additional attributes to Renewable Energy Certificates. This NPRR implements that allowance.This NPRR allows the competitive market to align with national and international incentive requirements and allows consumers to voluntarily firm clean power they purchase with batteries, nuclear, other sources. This will provide a new revenue source for generators and enable additional innovation in retail product offerings.After the passage of this NPRR, EACs will only be worth what buyers and sellers determine to be a mutually agreeable, fair price. |

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| Market Rules Notes |

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

* NPRR1188, Implement Nodal Dispatch and Energy Settlement for Controllable Load Resources
	+ Section 1.3.1.1
* NPRR1246, Energy Storage Resource Terminology Alignment for the Single-Model Era
	+ Section 1.3.1.1
* NPRR1250, RPS Mandatory Program Termination
	+ 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

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| Proposed Protocol Language Revision |

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;

(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;

(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

**JSON** JavaScript Object Notation

**REST** Representational State Transfer

**Wh** Watt-hour

**UTC** Coordinated Universal Time

**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.

(2) ERCOT has determined it is appropriate to allow generators to earn Energy Attribute Certificates (EACs) as described in Section 14, State of Texas Energy Attribute Certificate Trading Program. RECs are a subcategory of EACs.

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

(4) ERCOT shall administer the EAC Trading Program, which became effective July 1, 2001, and is to become a voluntary market on September 1, 2025. Entities participating in the EAC Trading Program must register with and execute the appropriate agreements with ERCOT.

14.2 Duties of ERCOT

(1) As described in more detail in this Section, ERCOT shall:

(a) Register energy generators;

(b) Register Retail Entities;

(c) Register other Entities choosing to participate in the Energy Attribute Certificate (EAC) Trading Program;

(d) Create and maintain EAC trading accounts for EAC Trading Program participants;

(e) On a monthly basis, award EACs earned by Renewable Energy Credit (REC) and EAC generators based on verified MWh production data;

(f) Retire EACs as directed by EAC Trading Program participants;

(g) Retire EACs as they expire;

(h) On a monthly basis, make public the aggregated total MWh competitive energy sales in Texas;

(i) Make public a list of EAC Account Holders with contact information (e-mail, address, and/or telephone number) so as to facilitate EAC trading;

(j) Maintain a list of offset generators and the Retail Entities to whom such a generator’s offsets were awarded by the Public Utility Commission of Texas (PUCT);

(k) Conduct an EAC Trading Program Settlement process annually;

(l) File an annual report with the PUCT as specified in subsection (h)(11) of P.U.C. Subst. R. 25.173, Renewable Energy Credit Program;

(m) Monitor the operational status of participating renewable energy generation facilities in Texas and record retirements;

(n) Audit MWh production data from certified REC generating facilities and other registered EAC generating facilities;

(o) Audit MWh production from renewable energy generation facilities producing offsets for Retail Entities on an annual basis;

(p) Post a list of Facility Identification Numbers, and the associated energy generation facility name, location, type, and noncompetitive certification data on the ERCOT website and a database of all EACs (with confidentiality protections described in Section 14.11, Maintain Public Information);

(q) Enable functionality to support the creation and issuance of fractional EACs timestamped at the hourly level;

(r) Provide public documentation on the process for EAC Account Holders and other parties to access account data via a Representational State Transfer (REST) Application Programming Interface (API). For third parties, the functionality should be able to access public data or data authorized by EAC Account Holders. The API should also facilitate actions (e.g., transfers, confirmations, retirements) between EAC Account Holders; and

(s) Provide functionality to disaggregate an EAC to enable the transfer of only a portion of the credit to another party.

(2) ERCOT may delegate the functions of Program Administrator to a national EAC registry software provider, and if it does so it must request feedback from EAC Market Participants and Technical Advisory Committee (TAC). This feedback should be a significant factor in determining the choice of the national EAC registry software provider.

14.2.1 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 Creation of Energy Attribute Certificate Accounts and Attributes of Energy Attribute Certificates

14.3.1 Creation of Energy Attribute Certificate Accounts

(1) ERCOT shall create Energy Attribute Certificate (EAC) Accounts for any party desiring to participate in the EAC Trading Program. ERCOT shall require all holders of EAC Accounts to execute a Standard Form Market Participant Agreement (as provided for in Section 22, Attachment A, Standard Form Market Participant Agreement) with ERCOT. Each party requesting an EAC Account must name a Designated Representative. The Designated Representative must have the authority to represent and legally bind the EAC Account Holder in all matters pertaining to the EAC Trading Program. These individuals will be the contact persons for ERCOT on matters regarding an EAC Account.

***14.3.2 Attributes of Energy Attribute Certificates***

(1) An EAC is a tradable instrument that represents all of the attributes associated with one MWh (or one million Watt-hour (Wh)) of production from a certified REC generator or registered EAC generator. RECs are a subcategory of EACs. An EAC may trade separately from energy. EACs are distributed to EAC generators on a monthly basis by ERCOT. The number of EACs distributed to a certified generator is based on physically metered MWh production. EACs may be traded, transferred, and retired.

(2) The attributes of an EAC and are defined in the table below.

|  |  |  |
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| **EAC Attribute** | **Field Length** | **Description** |
| Year | 4 Digits | Year EAC was issued. |
| Quarter | 1 Digit | Quarter EAC was issued. |
| Month | 2 Digits | Month EAC was issued. |
| [Optional] Hour | Datetime (18 Digits) | Period start of generation in Coordinated Universal Time (UTC), 1 hour interval. |
| Zone | 20 Characters | Load Zone where the generator is located. |
| Latitude/Longitude | 22 Characters | Latitude and Longitude of the facility, to six digits for each value.  |
| REC Attribute | 1 Digit | 1 if the EAC is a REC, 0 if it is not a REC. |
| State | 14 Characters | State name where generator is located. |
| Commercial Operations Date | 10 Characters | Year, month, date in the format YYYY-MM-DD. |
| Quantity | Float | Total Whs for the period (hour or month). |
| Third-Party Certification | JSON Object | Associated charge REC or EAC for a storage discharge EAC, as described by Section 14.12, Third-Party Certification Data Fields, or other appropriate data for other types of third-party certifiers. |
| Third-Party Certification Program | 255 Characters | The name of the third party the EAC Account Holder allowed to provide information to ERCOT for updating the third-party certification data field. |
| Storage Metadata | JSON Object | Additional associated charge records, discharge records, and energy losses, as inputted by the EAC Account Holder. |
| Type of Energy Resource | 20 Characters | Reference to type of energy Resource: Solar, wind, biomass, tidal, geothermal, hydro, landfill gas, other, nuclear, energy storage, low carbon gas, etc. |
| Facility Identification Number | 5 Digits | Number to be assigned by ERCOT. |
| EAC Number | Up to 20 Characters | Sequential EAC Number range 1 through the number of Wh generated by the facility during the month or hour.  |

(3) The Facility Identification Number assigned by ERCOT will be fixed for a facility’s lifetime, and will therefore remain constant regardless of changes in facility name or ownership. Facilities must file changes of name, ownership, or other relevant certification information with ERCOT within 30 days of such changes.

(4) Generating facilities that lose their Public Utility Commission of Texas (PUCT) REC generator certification will not be awarded EACs by ERCOT subsequent to the date of the certification revocation, unless ERCOT is otherwise directed by the PUCT.

(5) EACs have a useful life of three years. For example, a qualifying MWh of renewable energy generated on December 31, 2023 will be the basis for an EAC having an issue year of 2023. The three years for which this EAC may be used are 2023, 2024, and 2025. This EAC will expire one Business Day after March 31, 2026. March 31 is the date by which an EAC Account Holder must submit any final EAC retirement information for the prior year.

(6) Some fields that are specified above are inputted by the EAC Account Holder. ERCOT is not responsible for the contents of these fields.

(7) The production of an EAC by an Energy Storage Resource (ESR) is no guarantee of the type of energy used to initially charge it and the buyer of such a certificate is solely responsible for its use. However, a third-party certification program described in Section 14.13 and paragraphs (8), (9), and (10) below is designed to address this.

(8) When a third-party certification program requests to update the third-party certification data field for an ESR by providing REC information, ERCOT must confirm that a REC inputted into the third-party certification data field is owned by and was retired by the EAC Account Holder that updates the field. If the REC is not owned by and was retired by the EAC Account Holder, ERCOT must reject the update to the field and provide electronic notice to the EAC Account Holder that the requested update to the EAC was rejected.

(9) Similar functionality must exist for EACs that are not RECs if desired by the third-party certifier, such as for EACs associated with a nuclear generator (or any other fuel type). In these cases, ERCOT must also determine if the EAC was owned and retired by the EAC Account Holder.

(10) Updates to the third-party certification data field are governed by Section 14.12.

14.4 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) Any generator may also participate in the EAC program in the same manner as a REC generator. These generators must register with ERCOT to participate in the program but are not required to by Texas Administrative Code §25.173, Renewable Energy Credit Program, to apply for certification with the PUCT. A generator that registers under this paragraph with ERCOT may produce EACs that are not RECs, and its fuel source (nuclear, energy storage, etc.) must be specified in the EACs it produces.

 (3) 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.

(4) A generator participating in the EAC program may optionally choose to have their EACs issued on an hourly basis instead of monthly. If the generator makes this selection, then EACs issued in the future will have their EAC number fields reflect total Watt-hours (Whs) for the hour instead of the entire month, and the “Hour” field will be populated.

(5) An EAC Account Holder may authorize another Entity to view and/or perform actions (transfer/retire, etc.) to their EACs. The Entity must also register as an EAC Account Holder. The access can be granted for the whole account or only for specific generators. EAC Account Holders that register solely for assisting other EAC Account Holders in this manner are not subject to paragraph (3).

14.5.1 Energy Attribute Certificate Generators

(1) All Energy Attribute Certificate (EAC) generators must report hourly MWh production data for the month to ERCOT no later than 38 days after the last Operating Day of the month, in an electronic format prescribed by ERCOT or via Application Programming Interface (API). The reported MWh quantity shall be solely produced from, and attributable to, a renewable generator as so designated by the Public Utility Commission of Texas (PUCT) or equivalent registration with ERCOT as an EAC generator. Information relevant to quarterly reporting shall be handled in one of the following processes:

(a) A Generation Resource or Settlement Only Generator (SOG) that has interval meters, pursuant to Section 10, Metering, and has interval metered generation data provided to ERCOT for energy Settlement will:

(i) Have the monthly reporting function performed on their behalf by ERCOT using the Settlement Quality Meter Data extracted from the ERCOT Settlement system; or

(ii) Self-report their Settlement quality MWh production data to ERCOT, in a format and on a timeline prescribed by ERCOT, based on Metering Facilities that are:

(A) Installed, operated and maintained by the EAC generator;

(B) Installed in a location to only record energy from generation certified by the PUCT (or registered with ERCOT) to receive EACs;

(C) Compliant with American National Standards Institute (ANSI) C12, Code for Electricity Metering, metering accuracy standards; and

(D) Verified for accuracy every six years.

(b) REC aggregators shall report production from microgenerator renewable energy Resources that are not interval metered for energy Settlement, in accordance with the methodology approved by the PUCT for the purposes of measuring the REC production of such Resources, in the format prescribed by ERCOT, including applicable supporting documentation;

(c) All other EAC generators, not specifically covered in items (a) and (b) above, must report Settlement quality MWh production data to ERCOT in a format and on a timeline prescribed by ERCOT (including via API); provided that REC generators not interconnected to any Transmission and/or Distribution Service Provider (TDSP) may use performance measures for REC production as approved by the PUCT; or

(d) Entities certified to produce RECs from landfill gas supplied directly to a gas distribution system operated by a Municipally Owned Utility (MOU) shall report the MWh equivalent production data and supporting calculations to ERCOT on a timeline prescribed by ERCOT.

(2) From time to time, or as determined to be necessary by ERCOT or the PUCT, Entities shall submit supporting documentation to allow verification of generation quantities.

(3) The failure of an EAC generator to report generation data in a timely fashion shall result in a delay in the issuance of EACs for that generation facility for that month. EACs delayed by untimely reporting will be awarded during the EAC award period next occurring after the required data are reported. The issue date of such EACs will be based on the month in which the EACs were actually generated.

**14.6** **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 specified in Section 14.5.1, Energy Attribute Certificate Generators, 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.

**14.7 Transfer of Energy Attribute Certificates Between Parties**

(1) On the receipt of a request from the owner of an Energy Attribute Certificate (EAC) and purchaser of the EAC, ERCOT will transfer the EAC from the owner’s EAC trading account to the EAC trading account specified in the transfer request. Transfer requests received by ERCOT shall be effective upon confirmation by the receiving Entity. ERCOT must provide a Representational State Transfer (REST) Application Programming Interface (API) for EAC transfers. The API must, at minimum, provide functionality that:

(a) Allows the transfer of multiple and fractional EACs in one transaction across a range of time periods;

(b) Enables transfers down to the Watt-hour (Wh) of specific EACs, quantities of EACs, or equally weighted percentages of EACs, including the transfer of a specific range of Whs within one EAC hourly or monthly record (while maintaining serialization);

 (c) Allows transfers to be confirmed;

(d) Allows for the update of multiple EAC user-defined fields in one transaction, including the use of arrays to assign storage charging information to a variety of discharge EACs;

(e) Allows third parties that are digitally authorized by an EAC Account Holder to act (e.g., retire or make/confirm transfers) on behalf of the EAC Account Holder;

(f) Allows for the retirements of specific EACs or groups of EACs;

(g) Extracts certificate data, transfer data, and retirement data; and

(h) Fulfills other requirements specified in Section 14.10, Retiring and Disaggregating Energy Attribute Certificates, Section 14.11, Maintain Public Information, and Section 14.12, Third-Party Certification Data Fields.

(2) If a request for transfer cannot be executed, ERCOT will notify the requesting Entities of the reason.

(3) On completing a transfer, ERCOT shall notify the Designated Representatives of all involved EAC trading account owners by e-mail or API.

(4) For the purpose of the EAC Trading Program, EACs residing in an Entity’s EAC trading account are deemed to be owned by that Entity.

**14.8 *[RESERVED]***

**14.9 *[RESERVED]***

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**14.10** **Retiring and Disaggregating Energy Attribute Certificates**

(1) An Energy Attribute Certificate (EAC) account owner must submit retirement notifications to ERCOT. EACs specified by a Designated Representative for retirement must be in the EAC trading account from which they are being retired at the time the request is submitted. ERCOT shall retire such EACs by removing them from the party’s EAC trading account and retiring the unique serial number, thus rendering the EAC unusable for any other purpose. ERCOT shall maintain records to archive all EACs that have been retired. ERCOT shall provide a Representational State Transfer (REST) Application Programming Interface (API) to submit retirement notifications.

(2) In order to convert to hourly or enable partial transfers of EACs, an EAC account owner or authorized third party may disaggregate any EAC or set of EACs by using the API provided by ERCOT. To disaggregate an EAC, the EAC “Number” field shall be updated to reflect the number of Watt-hour (Wh) associated with each EAC, while maintaining serialization for each record. Disaggregation can be for as little as one Wh, and the disaggregation can occur as a component of a transfer transaction.

(a) The serialization should reflect the methodology described in Section 14.6, Awarding of Renewable Energy Attribute Certificates, but the quantity and serialization should reflect only those Whs represented by each new disaggregated record. For example, for a particular hour that previously had serialization from 1-600, the records will reflect 1-300 and 301-600 if the disaggregation was evenly split.

(b) ERCOT shall allow the API to split EACs on a percentage basis or a quantity basis, and receive information about the level of disaggregation. Percentages and quantities need not be the same for each disaggregated EAC. When EACs are disaggregated using a percentage, the sum of all Whs should be the same as was in the previously aggregated EAC record. To account for this, ERCOT may add or subtract Whs such that the percentages are not exactly equal in order to avoid inadvertently lost Whs due to rounding.

**14.11 Maintain Public Information**

(1) ERCOT shall maintain public information of interest to buyers and sellers of Energy Attribute Certificates (EACs) on the ERCOT website. The information provided shall include, at a minimum, a directory of all EAC generators and other participants in the EAC Trading Program. The directory shall include the following information:

(a) Name of the EAC generator or other EAC Account Holder;

(b) Name of the Designated Representative;

(c) Street address or post office box number;

(d) City, state or province, and zip or postal code;

(e) Country (if not the United States);

(f) Phone number if provided;

(g) E-mail address (with hypertext link); and

(h) Website address (with hypertext link).

(2) EAC Account Holders shall describe their participation in the EAC Trading Program using one or more of the following choices within a checkbox listing: EAC generator, EAC broker, EAC trader, EAC trading exchange, Renewable Energy Credit (REC) aggregator, or other.

(3) Entities are responsible for notifying ERCOT of changes in the above information.

(4) ERCOT shall conspicuously display the following disclaimer in upper case and in bold font:

**DISCLAIMER: ERCOT DOES NOT KNOW OR ENDORSE THE CREDIT WORTHINESS OR REPUTATION OF ANY EAC ACCOUNT HOLDER LISTED IN THIS DIRECTORY.**

(5) ERCOT may provide other information that describes the EAC Trading Program, as it deems convenient or necessary for administering the EAC Trading Program. ERCOT shall maintain a hypertext link to the appropriate pages on the Public Utility Commission of Texas’ (PUCT’s) website.

(6) ERCOT shall post each month the best available aggregated total energy sales (in MWh) of Load Serving Entities (LSEs) in Texas for the previous month and year-to-date for the calendar year. This posting shall be based on monthly Load Ratio Share, as described in Section 7.9.3.5, CRR Balancing Account Closure.

(7) ERCOT shall post a list of Facility Identification Numbers, associated names, locations, and types.

(8) ERCOT shall post a list of third-party certification programs, as described in Section 14.12, Third-Party Certification Data Fields, along with:

(a) Contact information for the third-party certification program, which standard for certification it is using, and copy of the audits the third-party certification program has provided to ERCOT;

(b) Which EAC Account Holders have provided notice to ERCOT that they are using that third-party certification program; and

(c) Information about how to register as a third-party certification program and how an EAC Account Holder can provide notice it is using a particular third-party certification program.

(9) ERCOT shall post documentation for any Application Programming Interfaces (APIs) created by ERCOT to administer the EAC program.

(10) ERCOT shall post a publicly available database of all EACs searchable via public APIs including transfer records and retirement information.

(a) Transfer records, and the “Latitude/Longitude” and “Facility ID” fields in the EAC database shall be redacted or confidential for 60 days.

**14.12 Third-Party Certification Data Fields**

(1) ERCOT shall allow third-party certification programs to register with ERCOT. Third-party certification programs must:

(a) Identify what standard the program is using to account for storage charging and discharging (including at minimum how it accounts for charge cycles and losses) in cases of certifying an energy storage facility;

(b) Identify what standard the program is using to account for fuel consumption at the facility in cases of certifying information about the fuel source used by an Energy Attribute Certificate (EAC) generator;

(c) Provide ERCOT with an annual third-party audit; and

(d) Execute a Standard Form Market Participant Agreement (as provided for in Section 22, Attachment A, Standard Form Market Participant Agreement) with ERCOT and name a Designated Representative. The Designated Representative must have the authority to represent and legally bind the Entity in all matters pertaining to the EAC Trading Program. These individuals will be the contact persons for ERCOT on matters regarding the EAC Trading Program.

(2) When a third-party certification program registers with ERCOT, ERCOT shall send a Market Notice to EAC Account Holders Authorized Representatives that includes the registration information.

(3) EAC Account Holders may notify ERCOT if they are using a third-party certification program using a notification method determined by ERCOT. ERCOT shall specify this method on the ERCOT website. An EAC Account Holder may also notify ERCOT that is no longer using a third-party certification program, at which point ERCOT shall no longer allow that third-party certification provider to update EACs for that EAC Account Holder.

(4) Third-party certification programs may provide ERCOT with a list of EACs in a format specified by ERCOT that meet their certification criteria from time to time.

(5) Following the receipt of this data, ERCOT shall update the associated EAC’s third-party certification data field with information specified by the third-party EAC certifier if the EAC Account Holder associated with the EAC has previously notified ERCOT that it is using the third-party certification program that provided certification information for that EAC.

(6) ERCOT shall only allow updates to the third-party certification data field if there is matching data on a third-party certification program. ERCOT shall not update the third-party certification data field if:

(a) The EAC Account Holder has not notified ERCOT that it is using that third-party certification program; or

(b) The third-party certification program fails to provide information in the format specified by ERCOT.

(7) ERCOT shall allow third-party certification programs to use a Representational State Transfer (REST) Application Programming Interface (API) to provide the list of EACs to ERCOT. If ERCOT rejects an update to the field for any reason that was provided via API, ERCOT shall notify the third-party certification program via API.

(8) ERCOT may decertify a third-party certification provider if it has good cause for doing so. Prior to decertification, ERCOT must provide notice that it is considering doing so to the Technical Advisory Committee (TAC).

(9) Unlike the third-party certification data field, which is only updated by ERCOT using the process described in paragraphs (1) through (8), the storage metadata field is updated by the EAC Account Holder. The EAC Account Holder may provide additional information about the EAC in this field if they choose to do so.

(10) ERCOT is not responsible for the accuracy of information provided to ERCOT by any third-party certification program.

**14.13 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.

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 AgreementBetweenParticipantandElectric 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; andC. 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.AgreementsNOW, 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 Department8000 Metropolis Drive (Building E), Suite 100Austin, Texas 78744Telephone: (512) 225-7000Facsimile: (512) 225-7079If 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 toStandard Form Market Participant AgreementBetween[Participant]andElectric 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”).RecitalsWHEREAS, Participant and ERCOT entered into a Standard Form Market Participant Agreement (SFA) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_; andWHEREAS, 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |