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| NPRR Number | [1235](https://www.ercot.com/mktrules/issues/NPRR1235) | NPRR Title | Dispatchable Reliability Reserve Service as a Stand-Alone Ancillary Service |
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| Date | | September 24, 2024 | |
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| Market Segment | | Independent Generators | |

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| Comments |

The Advanced Power Alliance (APA) appreciates the opportunity to provide comments on Nodal Protocol Revision Request (NPRR) 1235 related to the Dispatchable Reliability Reserve Service (DRRS). APA believes that the statutory language, the legislative history, and sound public policy all favor the inclusion of Energy Storage Resources (ESRs) from the outset of the program and agrees with other NPRR1235 commenters: ERCOT should develop DRRS in a manner that allows all Resources that meet the statutory requirements to participate. APA also agrees with the comments on NPRR1235 filed by the Joint Commenters on July 22, 2024 and August 7, 2024. As the Joint Commenters succinctly provided, the legislative history strongly favors the inclusion of ESRs. Excluding ESRs from participating in DRRS on day one is discriminatory, anti-competitive, and will unnecessarily increase costs for Texas’ consumers due to the lack of Resource diversification.

House Bill 1500 directed the Commission to require ERCOT to “develop and implement an ancillary services program to procure dispatchable reliability reserve services on a day-ahead and real-time basis to account for market uncertainty.”[[1]](#footnote-1) The Legislature itself required ERCOT to develop resource participation criteria comprised of three parts.[[2]](#footnote-2) Notably, the Legislature did not limit DRRS resource participation solely to Off-Line traditional generation as ERCOT is proposing.

Texas courts have a longstanding history of disallowing “extra-statutory requirements” in the implementation of legislation,[[3]](#footnote-3) and PURA § 39.159(d) is no exception. Simply put, all resources that meet the criteria set forth in PURA § 39.159(d) should be able to participate when DRRS is implemented. Decades of Texas Supreme Court jurisprudence show that, when an agency considers a statutorily irrelevant factor, the agency action is “arbitrary and capricious,” and thus, an abuse of discretion.[[4]](#footnote-4) If the Public Utility Commission (the Commission) approves a DRRS program developed by ERCOT that excludes ESRs, that action will be arbitrary and capricious. ERCOT and the Commission should rather follow the plain language of the statute and the clear legislative intent by including ESRs that are capable of meeting the statutory requirements.

While APA prefers that ESRs be included in NPRR 1235, APA does not oppose ERCOT’s proposed approach of preparing a separate NPRR to provide for ESR participation in DRRS. However, given that the ultimate implementation of NPRR 1235 will likely not be until after the implementation of Real-Time Co-Optimization (i.e., not until 2026 or later), there is no reason that an NPRR should not be completed and approved by the Commission in time for ESRs to participate in DRRS on day one. Failure to do so falls short of complying with the clear intent of the Legislature as set forth in the statutory language.

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| Revised Cover Page Language |

None at this time.

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| Revised Proposed Protocol Language |

None at this time.

1. Tex. Util. Code §39.159(d). [↑](#footnote-ref-1)
2. *See id*. at 39.159(d)(2). Those criteria require that a resource (1) have the capability of running at least four hours at the resource’s high sustained limit, (2) be able to be online and dispatchable within two hours of being called on for deployment and (3) have the dispatchable flexibility to address inter-hour operational challenges. [↑](#footnote-ref-2)
3. *See,* *e.g.*, Combs v. Roark Amusement & Vending, L.P. 422 S.W.3d 632, 637 (Tex. 2013) (barring the Comptroller of Public Accounts from imposing any “extra-statutory requirement” that was absent in the plain language of the statute in question). [↑](#footnote-ref-3)
4. *See, e.g.*, City of El Paso v. Public Utility Commission of Texas, 883 S.W.2d 179 at 184 (Tex. 1994). [↑](#footnote-ref-4)