**Proposed Firm Gas FFSS Product[[1]](#footnote-1)**

This document provides an overview of potential revisions to the FFSS currently set forth in the ERCOT Nodal Protocols (“Protocols”) that would allow natural gas generation facilities with firm transportation and storage agreements to qualify as FFSSRs if they meet certain requirements. These FFSSRs would be subject to ongoing obligations that would differ from the existing FFSSRs. The proposed revisions to the FFSS would allow ERCOT to further effectuate the directives from the Texas Legislature set forth in PURA §§ 39.159(b) and 39.159(c)(2), which contemplate that the reliability services procured by ERCOT to address reliability during extreme cold weather will include resources with “fuel supply arrangements to ensure winter performance for several days[.]”[[2]](#footnote-2)

# Firm Gas FFSSR Qualification Requirements

## The Generation Entity for the Generation Resource (or an Affiliate of such Generation Entity) must either own, or have a Firm Gas Storage Agreement (as defined below) for, sufficient natural gas storage capacity for the offered Generation Resource to deliver the offered MW for at least 48 hours.

### If the Generation Entity will utilize a contractual right to firm gas storage capacity on a third-party system under a Firm Gas Storage Agreement rather than a self-owned physical gas storage facility to qualify, then the Firm Gas Storage Agreement must have:

#### a term that ends no earlier than the end of the obligation period starting with Hour Ending 01:00 on [November 15, 2023] and ending with the conclusion of Hour Ending 24:00 on [March 15, 2024];

#### a maximum storage quantity not less than the amount of gas needed to allow the Generation Resource to deliver the offered MW for 48 hours;

#### a maximum daily withdrawal quantity that permits the Generation Entity (or an Affiliate) to withdraw from storage a daily quantity of gas sufficient to allow the Generation Resource to deliver the offered MW over a 48-hour interval; and

#### have a point of withdrawal that is a primary receipt point under its Firm Transportation Agreement (as defined below).

### If the Generation Entity will utilize storage owned by it or an Affiliate, then the Generation Entity must certify that for the entire obligation period it or its Affiliate, as applicable, retains the rights to:

#### sufficient storage capacity in its facility to store not less than the amount of gas needed to allow the Generation Resource to deliver the offered MW for 48 hours;

#### withdraw from its storage a daily quantity of gas sufficient to allow the Generation Resource to deliver the offered MW over a 48-hour interval; and

#### withdraw from its storage facility at a point of withdrawal that is a primary receipt point under its Firm Transportation Agreement.

## The Generation Entity for the Generation Resource (or an Affiliate of such Generation Entity) must own and have good title to sufficient natural gas in the storage facility for the offered Generation Resource to deliver the offered MW for at least 48 hours, and must commit to maintain such quantity of gas in storage at all times during the obligation period.[[3]](#footnote-3)

## The Generation Entity for the Generation Resource (or an Affiliate of such Generation Entity) must have entered into a Firm Transportation Agreement (as defined below) on a Qualifying Pipeline (as defined below) with:

### a maximum daily contract quantity sufficient to transport the quantity of natural gas described above from the storage facility to the Generation Resource in a quantity that is sufficient to allow generation of the offered FFSS MW for at least 48 hours;

### a primary receipt point that matches the point of withdrawal for the storage facility described above;

### a primary delivery point that permits delivery of the gas directly to the Generation Resource (including through a plant line or other dedicated lateral); and

### a term that ends no earlier than the end of the obligation period.

## The MW offered by the Generation Entity for the Generation Resource may not be less than the Generation Resource’s Low Sustained Limit.

## A Generation Resource may not participate as both an on-site fuel FFSSR and a firm gas FFSSR.

## If a Generation Resource selected as a FFSSR fails to deploy due to a Force Majeure Event, the Generation Entity for such Generation Resource must provide a report to ERCOT containing certain additional information, including:

### If the basis of the non-performance is a Force Majeure Event affecting the Generation Resource, a description of the Force Majeure Event giving rise to the non-performance, with reasonably full details of such Force Majeure Event.

### If the basis of the non-performance is the unavailability of the FFSSR’s Qualifying Pipeline or gas storage facility:

#### a copy of the relevant Firm Transportation Agreement and/or Firm Gas Storage Agreement;

#### a copy of the nominations submitted or a detailed accounting of no notices volumes delivered for the gas day prior to the Force Majeure Event until the gas day after the Force Majeure Event;

#### the applicable storage inventory level for the gas day prior to the Force Majeure Event until the gas day after the Force Majeure Event;

#### a copy of the force majeure notice from the Qualifying Pipeline operator or storage provider; and

#### the capacity and flow data from the Qualifying Pipeline or storage facility for the gas day prior to the Force Majeure Event until the gas day after the Force Majeure Event.

### To the best of its knowledge, how, why, and to what extent the Force Majeure Event actually and directly affected the FFSSR’s ability to perform.

### The FFSSR’s heat rate and generation curve.

### The applicable nominations, and if applicable, no-notice delivered, on the Qualifying Pipeline from the gas day prior to the Force Majeure Event until the day after the Force Majeure Event.

### ERCOT will have the right to request that the Generation Entity provide, or cause to be provided, any additional information ERCOT deems necessary, and the Generation Entity must provide such requested information to the extent reasonably within its possession or control. If the information is not in the possession of the Generation Entity (or its Affiliate) but may be in the possession of the Qualifying Pipeline operator or storage provider, the Generation Entity will exercise any contractual rights it has to request such information from the Qualifying Pipeline operator or storage provider, as applicable.

### Any information or documentation provided to ERCOT as part of the reporting process will be subject to the confidentiality protections and processes set forth in ERCOT Protocols Section 1.3.

## ERCOT will issue a Request for Proposals (“RFP”) soliciting offers for firm natural gas FFSSRs. The RFP will parallel the August 2022 RFP for on-site fuel and limited off-site natural gas storage FFSSRs,[[4]](#footnote-4) except that:

### The reserve fuel requirements will be tailored to match the requirements above.

### Each QSE will have to submit a certification for each Generation Resource that it offers into the RFP in which the Generation Entity that owns the Generation Resource:

#### Certifies that it has a Firm Transportation Agreement, firm natural gas supply, and contracted or owned storage capacity meeting the requirements set forth above.

#### Provides the following information regarding the Firm Transportation Agreement:

##### Qualifying Pipeline name;

##### Term;

##### Primary points of receipt and delivery;

##### Maximum daily contract quantity (in MMBtu);

##### Shipper of record; and

##### Whether the Firm Transportation Agreement provides for ratable receipts and deliveries.

#### Provides the following information regarding the storage arrangements:

##### Storage facility name;

##### Term of the Firm Gas Storage Agreement (if applicable);

##### Maximum storage quantity owned or contracted under the Firm Gas Storage Agreement (in MMBtu); and

##### Maximum daily withdrawal quantity (in MMBtu).

### Any information or documentation provided to ERCOT as part of the RFP process will be subject to the confidentiality protections and processes set forth in ERCOT Protocols Section 1.3.

# Ongoing Firm Gas FFSSR Obligations

## Material Changes

### It will constitute a material change under the ERCOT Protocols if a firm natural gas FFSSR ceases to satisfy any of the requirements to qualify as a firm natural gas FFSSR (*e.g.*, if the Firm Transportation Agreement is terminated or if the pipeline being utilized to provide firm natural gas FFSS no longer qualifies as a Qualifying Pipeline).

### The FFSSR will be required to notify ERCOT within two business days of such a material change.

### A Generation Resource’s status as a firm natural gas FFSSR will be revoked if such material change is an adverse change (*e.g.*, if a Firm Transportation Agreement is terminated and not replaced with a comparable, qualifying Firm Transportation Agreement).

## Force Majeure Events

### For a firm natural gas FFSSR, a Force Majeure Event will be treated the same as any other cause for unavailability for the purposes of calculating FFSSHREAF.

### As noted above, any firm natural gas FFSSR that fails to come On-Line or stay On-Line during an FFSS deployment due to a curtailment of its natural gas transportation or storage will be required to submit a report to ERCOT providing certain information and a copy of the Firm Transportation Agreement and/or Firm Gas Storage Agreement. Unless the agreement is a Certified Contract, if the applicable agreement does not ensure firmness in the manner required by the ERCOT Protocols, ERCOT will have the authority to revoke the award and claw back all sums awarded.

## Certified Contracts

### Any Generation Entity, may but is not required to, submit on a *voluntary* basis and in writing, a proposed form of Firm Gas Storage Agreement or Firm Transportation Agreement (whether to be entered into by the Generation Entity or an Affiliate thereof) to ERCOT for review of Qualified Contract status in accordance with such policies and procedures as ERCOT may develop or require from time to time consistent with the requirements of the firm natural gas FFSSR.

### ERCOT may, but is not obligated to, undertake a review of such agreement(s) and, if acceptable, certify in writing such agreement(s) as a Qualified Contract.

### To the extent that any such agreement(s) is so certified by ERCOT, it shall constitute a Qualified Contract, and a Generation Entity may rely upon such certification for purposes of a firm natural gas FFSSR. Any material change(s) to the ERCOT certified form of an existing Qualified Contract that affects the requirements of a firm natural gas FFSSR shall require a re-certification by ERCOT. For the avoidance of doubt, a Firm Gas Storage Agreement or Firm Transportation Agreement meeting the requirements of the natural gas FFSSR is not required to be certified as a Qualified Contract.

# Definitions

**“Firm Gas Storage Agreement”** will mean an executed and enforceable contract (together with any associated statement of operating conditions) for Firm Service at a natural gas storage facility that (i) contains a Qualifying Force Majeure Provision, (ii) provides the right to monitor daily balances of storage capacity, and (iii) requires the storage provider to make available a detailed accounting indicating a reasonable estimate ‎of daily and month-to-date receipts and deliveries of natural gas.

**“Firm Service”** will mean natural gas transportation or storage service that is (i) described as firm under a contract, tariff, or statement of operating conditions, (ii) the highest priority of service available, and (iii) available on demand and up to the contracted quantities.

**“Firm Transportation Agreement”** will mean an executed and enforceable contract (together with any associated statement of operating conditions) for Firm Service on an interstate or intrastate pipeline that (i) contains a Qualifying Force Majeure Provision, (ii) provides the right to monitor daily balances of flowing natural gas, and (iii) requires the pipeline to make available a detailed accounting indicating a reasonable estimate ‎of daily and month-to-date receipts and deliveries of natural gas.

**“Qualifying Force Majeure Provision”** will mean a force majeure provision that provides that:

(a)  before the pipeline or storage provider may suspend its performance due to force majeure, the pipeline or storage provider must exercise due diligence and incur reasonable cost to prevent or overcome the event of force majeure;

(b) the pipeline or storage provider will not be entitled to the benefit of force majeure to the extent its performance is affected solely by: its own negligence or willful misconduct; economic hardship (including the pipeline or storage provider’s ability to sell natural gas, natural gas transportation service, or gas storage service at a higher or more advantageous fee than the fee provided in the contract); breakdown, failure, freezing or breakage of, or the necessity for making repairs or alterations to, any facilities or equipment caused by a failure to properly maintain such facilities or equipment that is reasonably foreseeable; or a failure to satisfy weatherization requirements under applicable law;

(c) upon declaring force majeure, the pipeline or storage provider must provide notice and reasonably full details describing such force majeure in ‎writing to the Generation Entity; and

(d) within ten (10) days of a notice by a party of an event or occurrence of force majeure, the unaffected party shall have the right, at its own expense and upon reasonable notice to the other party, to audit and examine copies of the relevant portion of the records and recordings of the other party to the extent reasonably necessary to verify the full details of the event or occurrence of force majeure as described in the notice.

**“Qualified Contract”** means a form of Firm Gas Storage Agreement or Firm Transportation Agreement that has been submitted to ERCOT by a Generation Entity for certification that such agreement contains a Qualifying Force Majeure Provision, and otherwise meets the requirements as a Firm Gas Storage Agreement or Firm Transportation Agreement, as applicable, which agreement has in turn been so certified in writing by ERCOT pursuant to the ERCOT Protocols.

**“Qualifying Pipeline”** will mean a pipeline that is (a) (i) a natural gas pipeline subject to the jurisdiction of FERC under the Natural Gas Act (15 U.S.C. Section 717 *et seq*.), (ii) an intrastate natural gas pipeline that is not a “gas utility” under Title 3 of the Texas Utilities Code, or (iii) an intrastate pipeline that is a “gas utility” under Title 3 of the Texas Utilities Code that has certified to the Generation Entity that it does not have any contracts with human needs customers or local distribution systems that serve human needs customers; and (b) a critical natural gas facility, as defined in PUC Substantive Rule 25.52(c)(2).

1. All capitalized terms used but not defined herein shall have the meaning set forth in the ERCOT Protocols. [↑](#footnote-ref-1)
2. PURA § 39.159(c)(2). [↑](#footnote-ref-2)
3. Under the current Protocols, during or following the deployment of FFSS, a QSE for a FFSSR may request approval from ERCOT to restock its fuel reserve to restore their FFSS capability. Following approval from ERCOT, the QSE may restock its FFSS obligation. If ERCOT does not receive the request to restock from a QSE representing an FFSSR, ERCOT may instruct QSE to start restocking fuel reserve to restore its FFSS capability. *See* Protocol 3.14.5(5). Firm gas FFSSRs will be subject to the same or similar refueling provisions. [↑](#footnote-ref-3)
4. As in the first FFSS RFP, the QSE will be permitted to list and provide information for up to three Generation Resources to be used as an alternate Resource for providing FFSS. If offering any alternate Generation Resources, the price/quantity pair for the primary Generation Resource will apply to all alternate Generation Resources. It will be the responsibility of the QSE to notify ERCOT when an alternate Generation Resource will be designated as the primary FFSSR. Any alternate Generation Resources must: (i) be located at the same electrical station; (ii) be connected and supplied by the same pipeline system and gas storage facility as the primary Generation Resource; or (iii) separately demonstrate that it satisfies the contractual requirements applicable to qualify as a firm gas FFSSR. The same alternate Generation Resource may be listed as an alternate for multiple offers. An alternate Generation Resource also may submit its own offer to be designated as a FFSSR. However, if such Generation Resource’s offer to serve as a primary FFSSR clears, then it cannot be an alternate FFSSR up to the amount that clears.  [↑](#footnote-ref-4)