**Project no. 48023**

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| **RULEMAKING TO ADDRESS THE USE OF NON-TRADITIONAL TECHNOLOGIES IN ELECTRIC DELIVERY SERVICE** | **§**  **§**  **§**  **§** | **Public utility commission**  **Of texas** |

**TEXAS COMPETITIVE POWER ADVOCATES (TCPA) REPLY COMMENTS**

Texas Competitive Power Advocates (TCPA) appreciates the opportunity to provide reply comments to address some of the positions taken by other stakeholders in their November 2, 2018 reply to staff requests for comments regarding non-traditional technologies. TCPA is limiting these comments to the topic of transmission and distribution utilities’ (TDUs) ownership of those technologies, and does not, by omitting to address them here, intend to endorse any stakeholders’ positions on other topics.

**I. Reply to TDUs’ Position Regarding Energy Storage Ownership**

TCPA fundamentally disagrees with positions advanced by the TDUs[[1]](#footnote-1) in their November 2, 2018 filed comments. While these comments will not address all aspects of the TDU arguments made, they will address the flawed arguments that would subvert the restructuring of utility functions provided for in SB 7 and the undermining of competitive market forces at the core of the Legislature’s intent with SB 7 enactment.

First, the TDUs focus on the word “intend” in PURA § 35.152(a) to justify their ownership of energy storage devices and facilities. This language – “facilities that are intended to be used to sell energy or ancillary services at wholesale are generation assets” – mimics the wording used to define a “power generation company” in PURA § 31.002(10). The TDUs’ narrow focus ignores the additions to section 31.002(10) that were made by SB 943 to align and *clarify* that energy storage devices were deemed by the legislature to be generation facilities that must be owned and operated by a PGC. Oncor argues that “intent, not any actual sale, is the determinative factor”[[2]](#footnote-2) of whether an energy storage facility is classified as a generation asset. Similarly, CenterPoint argues in its comments that “[t]he Commission could not have adopted 16 TAC § 25.343(f)(3), expressly allowing utility-owned batteries located on the customer's side of the point of delivery to support the operation of the grid, if it had construed PURA' s unbundling and restructuring mandates as prohibiting utility ownership of batteries for such a purpose.”[[3]](#footnote-3) However, CenterPoint fails to acknowledge that: (1) this rule was adopted on August 21, 2003 in relation to a clarification on “competitive energy services” nearly eight years prior to the enactment of SB 943 in 2011; and (2) that the rule’s exception to ownership of batteries behind the customer’s meter is strictly limited to applications “necessary to support the operation of electric-utility-owned facilities” – that is, supporting the operation of TDU facilities such as substation equipment by backing up the TDU’s own critical load, but by no means putting energy back out onto the grid for sale to end-use customers. To argue that adoption of a strictly limited exception in the Commission’s substantive rule, prior to enactment of the law specific to energy storage, sanctions the ownership of energy storage currently contemplated in this project is disingenuous. In fact, the PUC was very clear in its reporting to the Legislature on the implementation of SB 943 that “[t]he Commission determined that energy used to charge a storage facility is a wholesale transaction.”[[4]](#footnote-4) A more in-depth review of the order amending that rule shows a stronger stance regarding energy storage as part of the wholesale market, and therefore, a component of the competitive market:

*This purchase of electricity is a wholesale transaction because the stored energy will subsequently be injected into the ERCOT system for a wholesale sale. Energy losses resulting from the energy conversion process and during storage are in the chain between the wholesale purchase and wholesale sale by the storage facility and therefore remain wholesale, like energy losses that occur in delivering energy from a generation facility through the ERCOT system to an end-use customer.[[5]](#footnote-5)*

The TDUs’ argument regarding intent of sale would subvert the purpose of separating utility functions, as the Legislature did with the enactment of SB 7. The argument completely ignores the two additional subsections included in the definition of “power generation company” that the Legislature chose to retain in SB 943 which specifies that a power generation company:

*(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and*

*(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.[[6]](#footnote-6)*

Clearly, the Legislature, in defining energy storage as a generation asset, chose to retain the prohibition for TDUs. The definition cannot be viewed piecemeal, putting emphasis on one word – intend – while ignoring the remaining statutory structure. In fact, the argument Oncor and CenterPoint use that TDUs may own energy storage as long as they do not *intend* to sell at wholesale could lead one to logically conclude that a TDU could also own and operate a traditional generation asset, such as a gas plant, post-SB 7, as long as it did not intend to sell the energy at wholesale. The addition made by SB 943 was to *include* “the owner or operator of energy storage equipment facilities” in the definition of a PGC while also retaining subsections (B) and (C) to that definition as discussed above. A plain reading of the full definition, including the *exclusion* of transmission and distribution utilities from such ownership, clearly discredits Oncor’s and CenterPoint’s arguments that intent of sale is a key component in whether or not the law allows them to own energy storage or not.

A second flawed argument advanced by the TDUs is that energy storage for their own reliability purposes is allowed under PURA. Oncor states, “Rather, if a TDU is using such facilities on its own system for its own reliability purposes, and not on the customer’s system, in the retail market, then those facilities are being used as part of a TDU’s core utility function and are not competitive energy services.”[[7]](#footnote-7) This suggests that a TDU’s “core utility function” extends beyond transmission and distribution service to include generation-based reliability service and that a TDU is entitled to determine which investments are for reliability and invoke an exemption to classify such an asset as part of transmission or distribution rather than under its presumptive classification as a generation resource or competitive energy service.

TCPA is concerned that such an interpretation would begin a slippery slope through which any aspect of the competitive market structure could be reregulated “for reliability purposes.” Importantly, PURA § 39.151 outlined the duties of the independent organization, ERCOT, and charged ERCOT to “ensure the reliability and adequacy of the regional electrical network.”[[8]](#footnote-8) For example, ERCOT, not the proposing TDU, determines whether a proposed transmission line is needed for reliability or is an economic project. ERCOT has protocols and a defined process for such determinations and these decisions are subject to Commission oversight and approval. While a transmission line is clearly part of the TDU’s delivery of electricity and maintained under the regulatory construct, generation that is needed for reliability of the grid remains a competitive resource that is subject to ERCOT dispatch under ERCOT protocols and oversight from the Commission. The Legislature granted the Commission power to adopt and enforce rules regarding reliability and authorized Commission delegation to ERCOT:

*The commission shall adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules...[[9]](#footnote-9)*

The TDUs suggest that they should be allowed to own energy storage facilities, in violation of PURA, for their “own reliability” purposes. Such a concept would, in essence, reregulate a type of generation – energy storage – and stifle competition for this service by providing an advantage to TDUs that would recover their costs for this investment in regulated rates from captive ratepayers and reap the benefits of a guaranteed rate of return. CenterPoint argues for this reregulation as well as the right to determine whether and how to employ energy storage:

*…TDUs should be allowed to deploy non-traditional technologies to enhance grid safety and reliability…and to recover prudent investments in those technologies through established rate recovery mechanisms.*

*The most important duty of a TDU is to safely and reliably deliver energy to the public. This is CenterPoint’s core obligation. It is an obligation owned by and conferred upon CenterPoint and other TDUs by law, and it is and should remain their responsibility to determine how best to meet this obligation, whether that involves the use of traditional technologies or non-traditional technologies.[[10]](#footnote-10)*

While CenterPoint recognizes its scope of duty and obligations are conferred upon it by law, it fails to recognize that part of that same body of law limits its scope of duty to its natural monopoly[[11]](#footnote-11) (namely, delivery of competitively-produced power) and confers upon the Commission an obligation that “regulatory authorities…shall authorize or order competitive rather than regulatory methods to achieve the goals of this chapter to the greatest extent feasible and shall adopt rules and issue orders that are both practical and limited so as to impose the least impact on competition.”[[12]](#footnote-12) The desire, on the part of TDUs, to change the manner in which they participate in the market to provide generation through energy storage does not alter the long-standing law that TDUs are prohibited from doing so. While CenterPoint claims that PURA does not partition TDU ownership rights between traditional and non-traditional technology devices[[13]](#footnote-13), PURA does partition TDU ownership of generation and - by its inclusion of energy storage as generation, with one specific grandfathering exception - energy storage as well.[[14]](#footnote-14) As such, energy storage is part of the competitive market construct, and any rule change to include it in the regulated unbundled utility paradigm is a violation of PURA.

**II. Reply to Lower Colorado River Authority (LCRA) Pilot Program**

In its comments, the LCRA proposed a pilot program of TDU-owned energy storage projects in the competitive areas.[[15]](#footnote-15) While the intent of evaluating opportunities and impacts within defined parameters is laudable, such a proposal is not currently sanctioned under PURA in that it violates the provisions of restructuring, generation as a competitive resource, and energy storage as generation.

**III. Conclusion**

The Legislature was clear throughout SB 7, in its initial restructuring of the electric market in ERCOT that transmission and distribution assets, remaining within the regulated construct, were to be separated from generation resources, which became a component of the competitive market. Throughout successive amendments to PURA, including the Legislature’s enactment of SB 943 to specifically address energy storage, the Legislature has declined to revise the separation between these market sectors. Despite TDUs’ desire to add energy storage to the investments for which they can recover costs and earn a rate of return, energy storage remains a generation resource for which competitive market participants make investment decisions based on market signals. Absent statutory change to specifically allow energy storage to be included in regulated rates, neither rule nor pilot project to allow TDU ownership is authorized under PURA. TCPA recommends the Commission affirm PURA’s clear distinction that energy storage is broadly (and with limited exception for true self-use) generation that a TDU may not own or operate.

Dated: November 16, 2018

Respectfully submitted,

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1. Comments filed by AEP Texas Inc and Electric Transmission Texas LLC, Oncor Electric Delivery Company LLC, and CenterPoint Energy Houston Electric LLC in Project 48023, filed on November 2, 2018 [↑](#footnote-ref-1)
2. Oncor Electric Delivery Company LLC’s Response to Questions in Project 48023, filed on November 2, 2018 at footnote 3 on page 3 [↑](#footnote-ref-2)
3. CenterPoint Energy Houston Electric LLC Initial Comments, filed November 2, 2018, in Project 48023 at footnote 6 on page 5 [↑](#footnote-ref-3)
4. Report to the 83rd Texas Legislature: Scope of Competition in Electric Markets in Texas, Public Utility Commission of Texas, January 2013 at page 10 (discussing the adopted amendments to 16 TAC §25.192 relating to transmission service rates). [↑](#footnote-ref-4)
5. Order Adopting Amendments to §25.192 and §25.501 As Approved at the March 7, 2012 Open Meeting in PUC Project 39917, Rulemaking on Energy Storage Issues, filed March 29, 2012 at page 13 [↑](#footnote-ref-5)
6. Enrolled SB 943, 83rd Regular Session, at 1:12-19 [↑](#footnote-ref-6)
7. Oncor Electric Delivery Company LLC’s Response to Questions in Project 48023, filed on November 2, 2018 at page 3 [↑](#footnote-ref-7)
8. PURA § 39.151 (a)(2) [↑](#footnote-ref-8)
9. PURA § 39.151 (d) [↑](#footnote-ref-9)
10. CenterPoint Energy Houston Electric LLC Initial Comments, filed November 2, 2018, in Project 48023 at pages 1-2 [↑](#footnote-ref-10)
11. PURA § 11.002(b) [↑](#footnote-ref-11)
12. PURA § 39.001 (d) [↑](#footnote-ref-12)
13. CenterPoint Energy Houston Electric LLC Initial Comments, filed November 2, 2018, in Project 48023 at page 3-4 [↑](#footnote-ref-13)
14. PURA §§ 31.002 (10), 35.151, and 35.152 [↑](#footnote-ref-14)
15. Lower Colorado River Authority and LCRA Transmission Services Corporation's Response to The Commission's Request for Comments, filed November 2, 2018, in Project 48023 at page 2-3 [↑](#footnote-ref-15)