

**PROJECT NO. 48249**

**RULEMAKING REGARDING LOAD  
TRANSFERS BETWEEN POWER  
REGIONS**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**TEXAS COMPETITIVE POWER ADVOCATES (TCPA) REPLY COMMENTS ON  
THE STAFF STRAWMAN PROPOSAL**

Texas Competitive Power Advocates (TCPA) appreciates the opportunity to provide reply comments to address some of the positions taken by other interested parties on the Staff strawman rule (strawman) regarding load transfers between power regions. TCPA reiterates its support for the intent of this rulemaking, namely to provide consistent, transparent and reasonable standards by which load transfers into or out of the Electric Reliability Council of Texas (ERCOT) will be evaluated. These reply comments focus on two overarching issues: (1) reasonable public interest criteria that are fair, robust, and avoid arbitrary barriers in the evaluation of load transfers; and (2) the definition of “affected entities” should be broadly construed to ensure a transfer is in the public interest.

**I. The Rule Should Reasonably Balance Public Interest Criteria, Cost Allocation Provisions, and Review Requirements**

TCPA is an ardent supporter of the ERCOT competitive market and believes that loads are best served by competition, which aligns incentives for keeping costs low, reliability high, and innovation constant. TCPA, therefore, clearly recognizes the appeal that the ERCOT market has to loads outside of ERCOT. TCPA also recognizes, however, that there are costs associated with evaluating and effectuating load transfers into or out of ERCOT, not all of which would be borne by the requesting or transferring utility.<sup>1</sup> While it may be appropriate to evaluate and assign certain costs to transferring utilities, the recommendations by some commenters would create

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<sup>1</sup> Several parties filed comments suggesting clarification in the rule between the utility seeking to transfer load from one power region to another, as compared to other utilities that might be implicated or interested in the effects of such a transfer. Suggested terms included “transferring utility” and “requesting utility.” TCPA agrees with the overarching principle of clarifying between the two potential interpretations but takes no position on what the appropriate term should be. As such, these comments may use the two interchangeably.

unreasonable and impossible standards if incorporated into the Commission's rule. TCPA suggests that if the Commission incorporates any such feedback into the proposal for publication, it do so in a way that strikes a reasonable balance and avoids establishing standards that may be best left to the specific facts of a load transfer petition proceeding.

**a. Burdensome “no harm” or “hold harmless” standards are obstructive and inconsistent with recent load transfer settlements.**

Southwest Public Service (SPS) and Texas Industrial Energy Consumers (TIEC) each recommended modifications to the strawman that would impose load transfer obligations to the point of discouraging such activity altogether. SPS recommends that a transferring utility be required to “pay all costs directly or indirectly caused by the load transfer to all related utilities,” specifically including transmission costs required to effectuate the transfer and 10 years' worth of transmission system revenue requirements that the transferring utility would have paid into its former power region, netted against any transmission projects avoided by virtue of the load transfer.<sup>2</sup> TIEC recommends a similar, but even broader approach, expanding to fully insulate against potential market and reliability impacts, as discussed in more detail in the sections below.<sup>3</sup>

As a threshold matter, TCPA notes that both SPS and TIEC appear to propose significant expansions upon the actual precedent established in recent proceedings. It should be noted that each of those proceedings were resolved through settlement.<sup>4</sup> As such, while they are certainly useful references for considering rule requirements, they should represent the outer bound of issues for consideration in this rulemaking – not a springboard to be expanded upon. While two of these proceedings did include “hold harmless” payment provisions, TCPA notes that such payments were limited to transmission costs and rooted in the specifics of each case. Therefore, the

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<sup>2</sup> Initial Comments of Southwestern Public Service Company on Staff Strawman Rule at 12 (July 20, 2020). (SPS Comments)

<sup>3</sup> Texas Industrial Energy Consumers' Comments on Staff's Strawman at 3 (July 20, 2020). (TIEC Comments)

<sup>4</sup> For example, TIEC cites to Docket Nos. 37990, 37576, and 48400, as well as to Commissioner comments at the January 18, 2018 open meeting. *See* TIEC Comments at 1-5. TCPA notes that none of these proceedings included a market price impact standard as proposed by TIEC, nor did they include the detailed hold-harmless provisions proposed by SPS.

Commission should not seek to replicate those settlement terms in rule but rather strike a more reasonable balance.

TCPA takes issue with these proposals substantively because they formally establish firm criteria that would need to be litigated in every load transfer petition, regardless of the materiality of those issues. As highlighted by comments from Texas Electric Cooperatives (TEC) and East Texas Electric Cooperative (ETEC), some load transfers are quite small, and complex analyses involving uncertain, long-range projections can be both of limited value and a drain on smaller utilities' resources (as well as other parties to the proceedings).<sup>5,6</sup> Even if a load threshold is established as suggested by some commenters,<sup>7</sup> requiring onerous "no harm" or "hold harmless" provisions in the rule will have a chilling effect on loads' abilities to transfer between power regions. As such, the requirements established in this rulemaking should not act as a barrier for load transfers in the future.

If, however, the Commission is inclined to include a "no harm" or "hold harmless" provision in its proposal for publication, TCPA would recommend working from a scaled-down version of SPS's proposal rather than TIEC's proposal for the reasons outlined below.

**b. Reliability, wholesale, and retail market impact public interest criteria would impose impossible (and inequitable) standards**

TCPA is specifically opposed to TIEC's proposal to include public interest determination criteria that would require the Commission to ensure that a load transfer would "not adversely impact reliability" and would "not adversely impact the retail or wholesale markets in ERCOT."<sup>8</sup> Such standards are vague, costly and complex to litigate, and impossible to achieve without violating core principles of market functionality. TEC noted similar concerns in its comments regarding the term "adverse effects."<sup>9</sup>

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<sup>5</sup> Initial Comments of Texas Electric Cooperatives, Inc. at 2-4 (July 20, 2020). (TEC Comments).

<sup>6</sup> Initial Comments of East Texas Electric Cooperative, Inc. at 3-4 (July 20, 2020). (ETEC Comments).

<sup>7</sup> ETEC Comments at 4; SPS Comments at 11; TEC Comments at 3.

<sup>8</sup> TIEC Comments at 7-8.

<sup>9</sup> TEC Comments at 6.



First, regarding TIEC's reliability standard of review proposal, as TCPA noted in its initial comments, the ERCOT market has no mandatory reliability standard or required reserve margin. This policy is the outcome of many years of policy proceedings, all of which TIEC has actively participated in and opposed proposals to establish mandatory reliability standards.<sup>10</sup> As such, it would be inappropriate to require the Commission to apply an unspecified resource adequacy standard to loads seeking transfer into ERCOT when such standards do not apply to loads that already exist or are added within ERCOT. To underscore this point, no such reliability analysis is required when a new large industrial load comes online in the ERCOT market – instead, the market is trusted to incorporate this information into prices in order to balance supply and demand.

Second, it is unclear how an evaluation would be reasonably conducted. The ERCOT competitive market is designed to correct supply issues through price signals. This process is inherently iterative, fluctuates and involves the decisions of hundreds of independent market participants over time. For example, a large load transfer into ERCOT might temporarily reduce reliability by reducing the reserve margin, but the associated wholesale price response could incentivize new generation development, in turn reducing wholesale prices once the new capacity is brought online. Conversely, a large load transfer associated with sizeable generation assets could initially increase reliability but depress price signals to other generators, signaling a need to exit the market and in turn reduce reserve margins. Therefore, any reliability impact should be focused on transmission and distribution system reliability.

Third, TIEC's proposed standard of "will not adversely impact the retail or wholesale markets in ERCOT" and "pricing analysis" proposal have very similar issues that compound the issues with their suggested reliability standard of review. TIEC's proposed language here appears to reflect a normative and myopic view of the wholesale and retail markets – namely, that any upward movement in prices is inherently an "adverse" outcome.

While TIEC's proposed pricing analysis and market impacts standard may reflect the perspective of TIEC's members, that perspective is not appropriately generalized to the market. Market prices are neither good nor bad – they are simply a reflection of supply and demand. As

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<sup>10</sup> See, for example: *PUC Proceeding Relating to Resource and Reserve Adequacy and Shortage Pricing* (Project No. 37897); *Commission Proceeding to Ensure Resource Adequacy In Texas* (Project No. 40000); and *Review of the Reliability Standard in the ERCOT Region* (Project No. 42302).

such, the only reasonable interpretation of “adversely impact” as TIEC has proposed would be some outcome that precludes the ability of the ERCOT wholesale or retail markets to function – which is a very unlikely scenario. But TIEC’s proposal to require a “pricing analysis” of potential impacts to the ERCOT Settlement Price Point and Locational Marginal Price (LMP) makes clear that TIEC’s position is that market prices should never increase as a result of a load transfer.<sup>11</sup> This is also an inequitable and impossible standard,<sup>12</sup> disconnected from core market principles. Any action that increases prices in ERCOT, including a load transfer, would be subject to market forces as supplier investment decisions react to those higher prices.

Similarly, while it is possible that TIEC intended “not adversely impact reliability” to specifically mean “transmission system reliability,” which TCPA noted in its initial comments it would not oppose,<sup>13</sup> the bulk of TIEC’s comments appear clearly focused on the resource adequacy variety of reliability.<sup>14</sup> As such, TCPA firmly opposes both TIEC’s proposed reliability and market impacts standards of review proposals as vague and highly litigable standards that would drive up parties’ costs and take up Commission resources despite revolving around an issue that the ERCOT market is designed to self-correct over time through price signals.

TIEC’s proposed reliability and market impacts standards are difficult to simultaneously reconcile. As noted above, wholesale prices and reserve margins are fundamentally linked in ERCOT. As such, it would seem an impossible standard to require a proposed load transfer to both have no impact on pricing and no impact on reserve margins unless that load was perfectly matched with accompanying generation. A perfect load-to-generation portfolio match is a very unlikely scenario, particularly given that load shapes may change upon integration in response to market price signals, as would generation resource utilization. In sum, TCPA respectfully requests that

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<sup>11</sup> TIEC Comments at 8.

<sup>12</sup> Again, this kind of analysis is not required for new loads coming online inside of ERCOT.

<sup>13</sup> Texas Competitive Power Advocates (TCPA) Comments on the Staff Strawman Proposal at 2 (July 20, 2020). (TCPA Comments).

<sup>14</sup> TIEC Comments at 7: “In a period of tight reserves, a new permanent load transfer could result in extreme short-term costs to the market.... the Commission should nonetheless ensure that it has the tools necessary to protect the market from any unreasonable price and reliability impacts. These factors should be reflected in the Commission’s public interest analysis.”



the Commission decline to include TIEC's proposed "Standard of Review" language and pricing analysis in the proposal for publication in this rulemaking.

**c. Directly-assigned costs should be directly measurable**

Several parties suggested rule language that would directly assign certain costs to the transferring utility, and some suggested specifying such assignable costs. For example, ERCOT and Oncor both proposed assigning load transfer study costs to the requesting utility in addition to production cost analysis costs.<sup>15,16</sup> Similarly (but perhaps conversely), ETEC also requested that the Commission specify what kinds of studies planning entities must undertake regarding proposed load transfers, in order to help narrow the scope of costs that transferring utilities must cover.<sup>17</sup> In addition to the reliability and market price standards noted above, TIEC also proposed that the transferring utility bear the net cost of any incremental transmission necessary to effectuate the transfer as well as any stranded transmission costs.<sup>18</sup> Also, in addition to the proposed "hold harmless" provision discussed above, SPS also proposed expanding the application requirement to describe any "expected" adverse effects of the load transfer to require a description of any "potential" adverse effects, which would seem to open the scope of litigable (and presumably assignable) costs in the process. Similarly, Oncor proposed an expansion of cost estimates to include "all direct and indirect costs on all utilities and customers affected by the transfer, including but not limited to any production-cost analysis."<sup>19</sup>

TCPA agrees that the Commission has authority to require payments from the transferring utility to other affected entities as a condition of approval. TCPA also recognizes that some such conditions may be appropriate for inclusion in the rule, whereas others may be warranted based on the specific facts of a load transfer petition, but not be appropriate as generally applicable requirements. TCPA again cautions against erecting barriers to load transfers through vague or expansive cost estimation requirements and assignment principles. To the extent that the

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<sup>15</sup> Electric Reliability Council of Texas, Inc.'s Comments to Commission Staff's Strawman at 3-4 (July 20, 2020). (ERCOT Comments).

<sup>16</sup> Oncor Electric Delivery Company LLC's Comments on the Strawman Rule for New 16 Texas Administrative Code § 25.226 at 3 (July 20, 2020). (Oncor Comments).

<sup>17</sup> ETEC Comments at 2-3.

<sup>18</sup> TIEC Comments at 5-6.

<sup>19</sup> Oncor Comments at 5 and 15

Commission agrees that the rule should specify assignable costs, TCPA suggests that a more balanced approach would be to specify that costs should be directly measurable, such as transmission cost issues including stranded assets and incremental transmission needed to serve the new load.

If the Commission chooses to include a “hold harmless” provision, TCPA suggests a limited approach based on the SPS proposal. While TCPA reiterates that it does not believe such a provision is necessary, a scaled-down approach would not prejudice parties’ ability to litigate the issues raised by SPS, but also avoid *requiring* them to do so in each case.

*Cost Assignment Recovery for related utilities and customers. A The Commission may require a transferring utility shall to pay all net costs directly or indirectly caused by the load transfer to all related utilities. Such cost recovery may include pass through payments to customers or other affected entities as directed by the Commission in the docket considering the application. Such “hold harmless” recovery shall cost assignment may incorporate the following elements:*

- (i) transmission costs required to safely and reliably transfer the load to the different power region and maintain reliability in the power region exited;*
- (ii) transmission system revenue requirements projected to be incurred over a ten year period beginning on the date of the proposed transfer to the new power region related to system planning and development established prior to the approval of the load transfer that would have been recovered from the affected load that will be shifted to other customers; the cost of any facilities that are no longer used and useful as a result of the transfer; and*
- (iii) off-setting credits for planned transmission projects that have been planned but can be avoided due to the load transfer; as determined by ERCOT or a planning entity as applicable.*

**d. Prefiling requirements should not provide planning entities with undefined leverage over proposed transfers**

Notwithstanding TCPA’s support for production cost analyses as a valuable input to a load transfer petition, ETEC noted that a transferring utility may not be able to compel the non-ERCOT Regional Transmission Organization (RTO) to conduct such a study.<sup>20</sup> Oncor, on the other hand, recommended that the strawman expand the requirement in Subsection 25.226(c)(1)(A) to require that *all* reviews of the proposed transfer by other RTOs (or other planning entities) be completed prior to initiating a proceeding with the Commission, as well as require that ERCOT’s review follow the independent review criteria for Tier 1 projects under Section 3.11.4.7 of the ERCOT

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<sup>20</sup> ETEC Comments at 4.



Nodal Protocols.<sup>21</sup> In the abstract, TCPA would agree with Oncor's recommendation. However, TCPA is sympathetic to the concern raised by ETEC, and agrees that another RTO should not be permitted to hinder or "filibuster" the requesting utility's ability to seek Commission approval of a load transfer (e.g., by refusing to conduct the required analyses). As such, TCPA believes the strawman's approach to require completion of ERCOT-conducted reviews prior to filing a load transfer application with the Commission (but only provide a timeline for seeking input from other planning entities and potentially affected other utilities) strikes the appropriate balance.

Similarly, TCPA appreciates the intent of Oncor's proposal to require ERCOT to follow established Tier 1 independent review criteria under its current Protocols, but questions whether that is the appropriate process to follow for all load transfers given that Tier 1 transmission projects represent the largest (\$100,000,000 or greater estimated capital cost) and most extensively reviewed (requiring review by the Regional Planning Group and endorsement by the ERCOT Board). While TCPA believes that ERCOT stakeholders are a valuable source of input, TCPA is concerned that requiring a formal stakeholder review could hinder the ability of transferring loads to comply with the strawman's requirements. Instead, TCPA supports ERCOT's recommendation "to work with stakeholders to revise the ERCOT Protocols and/or ERCOT Planning Guide to specifically address the reviews ERCOT may require prior to a Load transfer."<sup>22</sup>

TCPA also notes ERCOT's observation that current ERCOT Protocols require approval of the ERCOT Board and a four-year waiting period prior to a change in Load Zone, which may implicate the timeline for loads seeking to leave ERCOT.<sup>23</sup> TCPA distinguishes this scenario from those mentioned above, and believes that it is appropriate for the existing Protocol requirements to apply to load transfers out of ERCOT. Loads that exist within ERCOT should be aware of this requirement and plan accordingly should they desire to transfer to a different power region.

## **II. "Affected entities" should be defined broadly to allow participation and ensure a fair outcome**

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<sup>21</sup> Oncor Comments at 3.

<sup>22</sup> ERCOT Comments at 3.

<sup>23</sup> ERCOT Comments at 4.



Both TEC and SPS suggested a narrowing of the definition of “affected entities” to only include utilities.<sup>24,25</sup> TCPA urges the Commission to not incorporate such a definition into its rule. There are only three references to “affected entities” in the strawman – one that seems primarily focused on ensuring a description of impacted facilities and other utilities in Subsection 25.226(c)(2)(C), one in the cost and benefit estimate provision under Subsection 25.226(c)(2)(F), and the other in the additional notice provision under Section 25.226(c)(5)(D). Load transfers impact more parties than simply other utilities, and those entities should have an opportunity to receive notice of proposed load transfers and to have costs and benefits that might accrue to them as a result of a load transfer identified in the application, if known. While TEC and SPS may be correct in most instances the affected parties would be other utilities, and the first use of the term does seem to imply other utilities, defining “affected entities” in the rule to exclude other potentially impacted parties would be unnecessarily prejudicial. A preferable approach would be to simply modify Subsection 25.226(c)(2)(C) to read:

*(C) a description of the affected facilities and ~~entities~~ other nearby utilities, including diagrams that delineate the transfer. The diagrams must be at least 8 ½” x 11” in size, and must clearly and conspicuously depict proposed and existing facilities for all utilities within a minimum of five miles of the facilities that the utility will disconnect from or interconnect to as part of the transfer, and must depict all major, conspicuous obstacles for proposed facilities. Facilities must be labeled by utility ownership and with associated voltage levels;*

### **III. Conclusion**

Once again, TCPA generally supports allowing additional load to become part of ERCOT. The strawman rule as proposed by staff appears to address the issues brought before the Commission in recent load transfer cases, but TCPA urges that the rule should not seek to over-prescribe issues raised and resolved via settlement agreement in those proceedings as formal requirements for all load transfers. TCPA appreciates the opportunity to provide these reply comments and looks forward to participating in the next phase of this rulemaking.

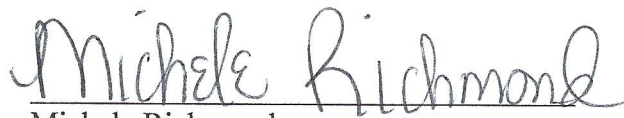
Dated: August 4, 2020

Respectfully submitted,

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<sup>24</sup> TEC Comments at 5.

<sup>25</sup> SPS Comments at 3-4.

A handwritten signature in black ink that reads "Michele Richmond". The signature is fluid and cursive, with the first name "Michele" and last name "Richmond" clearly distinguishable.

Michele Richmond

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