



LEGISLATIVE & REGULATORY UPDATE

Volume 5 - October 29, 2021

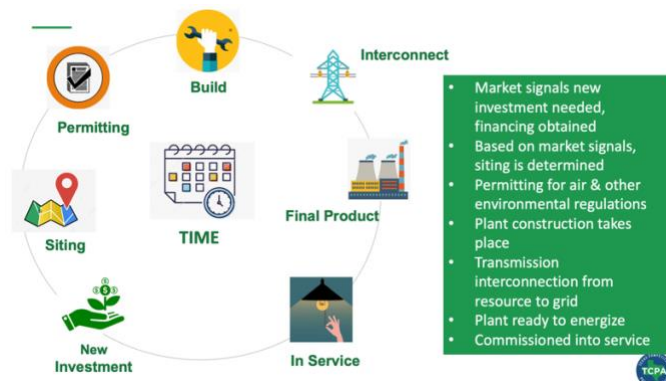
Texas Competitive Power Advocates (TCPA) is a trade association representing eleven power generation companies and wholesale power marketers with investments in Texas and the ERCOT wholesale electric market. TCPA members provide almost 90% of the total non-wind electric generating capacity in ERCOT, and more than 60% of the total ERCOT generation fleet.

TCPA member companies include: Calpine, Cogentrix, EDF Trading North America, Exelon, Luminant (Vistra), NRG, Shell Energy North America, Talen Energy, Tenaska, TexGen Power, and WattBridge. Here is a [LINK](#) to our website.

If you are interested in knowing what generation resources TCPA member companies have, here is a [LINK](#) to our interactive map. The data can be searched by company, fuel type and county.

I. **TCPA Legislative “Lunch & Learn”**

- a. Staffers joined TCPA at the state Capitol on October 21st for lunch and a presentation about what has taken place regarding rules implementation since the Legislature met, as well as TCPA’s perspective for achieving reliability in ERCOT through competitive markets.
- b. Weatherization is already underway – many TCPA companies are presently spending millions to ensure their existing plants are ready for the winter. New plant construction will take time – the entire cycle, from securing financing, siting a unit, permitting, construction and interconnection, is an 18 to 36-month process.
- c. TCPA anticipates hosting additional “Lunch & Learns” at the Capitol in March and June 2022. If there are topics you would like to see addressed, please don’t hesitate to contact [Michele Richmond with TCPA](#).





- II. **What to Say When Asked “Why Haven’t You Fixed the Grid???”** TCPA understands you may get questions from constituents about what is being done to ensure electric reliability and improve the ERCOT grid. Here is a short response that could help your office respond to these inquiries, and a few bullet points to support your message:
- a. RESPONSE: Numerous bills were passed by the 87th Legislature to address the challenges experienced during Winter Storm Uri. This legislation results in comprehensive changes to the entire energy industry and they are being implemented as quickly as possible to help lower the risk to Texans.
 - b. Among the bills passed by the Legislature are:
 - i. HB 16 (Hernandez) — Elimination of Wholesale Indexed Products
 - ii. HB 3648 (Geren) — Mapping Critical Infrastructure
 - iii. SB 2 (Hancock)— ERCOT Reform
 - iv. SB 3 (Schwertner) — Market Design, Weatherization, Tx. Energy Reliability Council
 - v. SB 1281 (Hancock) — Transmission Reform
 - vi. SB 2154 (Schwertner) — PUCT Reform
 - c. The PUCT, ERCOT & the RRC are undertaking dozens of rulemakings to implement these directives, including:
 - i. PUCT Project 51840 – Weatherization
 - ii. PUCT Project 52312 – Administrative Penalties
 - iii. PUCT Project 52691 – ERCOT Weather Study
 - iv. PUCT Project 52345 – Critical Infrastructure Designation & Mapping
 - v. PUCT Project 52373 – Market Design
 - vi. ERCOT NPRR 1087 – Critical Loads
 - vii. ERCOT NPRR 1086 – Systemwide Offer Cap
 - viii. ERCOT NPRRs 1084 & 1097 – Outage Reporting
 - ix. RRC - Critical Designation of Natural Gas Infrastructure
 - x. RRC - Weatherization of Natural Gas Components
 - xi. RRC - Penalty Guidelines for Violations
 - xii. RRC - Prioritization of Gas in Emergencies
 - d. New leadership at the PUCT and ERCOT, as well as key advisory bodies, have been named, including:
 - i. PUCT expanded from three to five members, with four members named
 - ii. ERCOT has a new interim CEO, new board members and new staff
 - iii. The recently formed Texas Energy Reliability Council has been named, with appointees from the Governor, Lt. Governor, Speaker of the House, RRC and PUCT, and held its first meeting on Monday, October 25.



- e. TCPA members are undertaking weatherization projects to ensure reliability, such as installing additional heat tracers and insulation, making fuel storage enhancements, diversifying pipeline suppliers, investing in additional fuel storage capacity, and training personnel on lesson learned.
- f. The PUCT and ERCOT have taken administrative actions to ensure grid stability, including:
 - i. On October 21st, the PUCT adopted Phase One of the weather emergency preparedness plan, which requires generators to implement weather readiness recommendations and address acute issues by December 1, 2021. ERCOT will conduct inspections of plants during December and report resources not in compliance to the PUC.
 - ii. Phase Two will implement more comprehensive, year-round reliability standards, and will be developed pending a weather study currently being conducted by ERCOT in consultation with the Office of the Texas State Climatologist.
- g. New generation construction is underway, with some TCPA member companies having broken ground this quarter and others beginning the interconnection and siting process for additional dispatchable investment in ERCOT.
- h. TCPA has issued recommendations for reliability in ERCOT through competitive markets, including:
 - i. Set a reliability standard and enforce it.
 - ii. Value reliable dispatchable resources.
 - iii. Market prices should provide a stable & consistent revenue stream to reliable resources.
 - iv. Investment risks should be placed on energy companies & not on consumers.
 - v. Prices must reflect competitive outcomes in the market & prices should be adjusted to offset out-of-market actions.
 - vi. No segment of generation should be subsidized or provided cost recovery & guaranteed rate of return.

III. PUCT Proposed Rules on Critical Natural Gas Facilities and Entities (PUCT Project No. 52345)

- a. TCPA filed written comments with the PUCT on October 7th. You can review our comments [HERE](#). Among our comments:
- b. A stand-alone definition of “critical natural gas” should be used to incorporate all of the requirements established by the legislature instead of relying upon the RRC’s current proposed industry-wide critical designation.
- c. The existing form used by electric utilities to designate critical generation facilities should be modified to provide additional information needed for prioritization.
- d. The PUC should coordinate efforts with the RRC to shift from the “presumed critical” approach in the current proposal to an approach that separates the truly critical infrastructure from less important components, as well as prevent the misperception that



entities opting-out of initial “critical” designation will not become subject to weatherization requirements if imminent mapping and prioritization activities identify them as such.

- e. Lastly, regulators should create more meaningful weatherization expectations.

IV. RRC Stakeholder Meeting – October 20th, 2021

- a. TCPA participated in a joint meeting of the RRC and the PUCT to coordinate the electric and natural gas industries in advance of the coming winter. On behalf of the generator segment, TCPA made the following points:
 - i. When the RRC curtails gas utilization in an effort to meet “human needs,” it must recognize and include electric power generation in that definition, since residential gas furnaces need electricity to function.
 - ii. Discussions around fuel availability and other longer-term issues need to be addressed with the natural gas industry and electric industry using the same terminology and expectations for “firm fuel” and “firm transport.” Industry and regulators must consider whether firm fuel supply and transportation contracts will even be truly achievable.
 - iii. Long term, there needs to be greater symmetry and transparency between generation and the natural gas industry. For example, when electric generation resources fail to perform for whatever reason, there are currently extensive reporting and transparency obligations. Similar requirements should be developed by the RRC & PUCT when gas availability is curtailed or “force majeure” clauses are activated.
 - iv. When prioritizing resources, not everything can be “critical” and not everyone can be insulated from load shed for reliability purposes.
 - v. Above all, we hope to work collaboratively with the natural gas industry. TCPA’s goal is to ensure the critical components of the electric and natural gas industries are identified and weatherized such that there is no curtailment of fuel in the future and we do not get to the point where tiers of priority for load shed are needed.
- b. There were numerous notices from gas suppliers to electric generators 5-7 days before Winter Storm Uri, and before any power outages occurred, stating that contracted fuel would not be delivered. Protecting against this problem will not be addressed merely by designating different tiers of natural gas facilities to determine which components are curtailed in a power emergency.

V. PUCT Proposal for Publication re the High System-Wide Offer Cap (PUCT Project 52631)

- a. Currently, in times of significant scarcity, the PUCT price modelling allows power prices to peak at \$9,000/MWh – much higher than the average price of power, which presently is



in the \$20-\$40 MWh range. Regulators were highly criticized during Winter Storm Uri that this “High System-Wide Offer Cap” (HCAP) was maximized for too long – well past when all available generation was online, resulting in immense energy costs. Some stakeholders argue that the \$9,000 per MW/hour HCAP should be reduced, to \$4,500 or some multiple of the incremental cost of fuel.

- b. TCPA filed written comments with the PUCT on October 28th. You can review our comments [HERE](#). Among our comments:
 - i. Setting the HCAP \$4,500 *may* be appropriate, if properly coordinated with other changes to the PUCT pricing models (known as the Operating Reserve Demand Curve, or ORDC). However, lowering the HCAP without implementing broader reforms, including adjusting assumptions and probabilities that available power reserves could become scarce, would undercut the Legislature’s goal to align the competitive market with the reliability requirements discussed during the 87th Legislature. This would be a step backwards in providing the necessary investment signals to existing and new generation resource owners.
 - ii. The ORDC reforms should incentivize a desired level of power reserves at a reasonable price. This will ensure that generation resources will have the financial incentive to self-commit to bring power online, and regulators won’t have to rely on out-of-market actions (such as forcing generation to come online) to get to desired reserve levels.
 - iii. The Commission should implement reforms to the ORDC at the same time as lowering the HCAP - preferably by the end of 2021 - to ensure prices in the competitive market appropriately reflect the value of maintaining reserve power.

VI. **Additional TCPA Legislative Activities**

- a. TCPA Roadshow: Projected to include meetings with legislators in Houston (November 2021), San Antonio and South Texas (February 2022), and Dallas (May 2022)
- b. Plant Tours: TCPA is scheduling plant tours at member company generation facilities. If you or your staff are interested in receiving a tour, please [contact TCPA](#) to let us know.

Please feel free to reach out to TCPA with any questions or comments you may have.

Michele Richmond, Executive Director
Texas Competitive Power Advocates
michele@competitivepower.org
cell: 512-653-7447
www.competitivepower.org

Eric Woomer
Eric Woomer / Policy Solutions
eric@ericwoomer.com
cell: 512-845-9552
www.ericwoomer.com