**PROJECT NO. 51841**

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| **REVIEW OF 16 TAC § 25.53 RELATING TO ELECTRIC SERVICE EMERGENCY OPERATIONS PLANS** | **§**  **§**  **§** | **BEFORE THE**  **PUBLIC UTILITY COMMISSION**  **OF TEXAS** |

**COMMENTS OF TEXAS COMPETITIVE POWER ADVOCATES**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

Texas Competitive Power Advocates (TCPA) submits the following comments concerning proposed new 16 Tex. Admin. Code (TAC) § 25.53 relating to electric service emergency operations plans (EOPs), as approved for publication by the Public Utility Commission of Texas (Commission) at its November 30, 2021 open meeting and as published in the *Texas Register* on December 17, 2021.[[1]](#footnote-2)

Texas Competitive Power Advocates (TCPA) is a trade association representing power generation companies and wholesale power marketers with investments in Texas and the Electric Reliability Council of Texas (ERCOT) wholesale electric market. TCPA members[[2]](#footnote-3) and their affiliates provide a wide range of important market functions and services in ERCOT, including development, operation, and management of power generation assets, power scheduling and marketing, energy management services and sales of competitive electric service to consumers. TCPA members participating in this filing provide nearly ninety percent (90%) of the non-wind electric generating capacity in ERCOT, representing billions of dollars of investment in the state, and employing thousands of Texans.

**I. General Comments**

TCPA appreciates the Commission’s continued focus on ensuring the public’s confidence in the reliability of the electric system following Winter Storm Uri. One lesson from Winter Storm Uri was that the Commission would benefit from greater visibility into the emergency planning and operations of the entities it oversees. TCPA recognizes the reporting requirements regarding EOPs established by Senate Bill 3 (SB 3) and supports the objective of ensuring the Commission has adequate access to the information needed to fulfill that directive in an efficient and secure manner.

The Commission should seek to strike a balance in this rule that improves access for the Commission to information that has a practical value in supporting continuity of adequate electric service during an emergency while not burdening entities, ERCOT or Commission Staff with over-specified compliance and oversight obligations that will not be useful to the entities in preparing for an emergency themselves, and not requiring disclosure of details that could harm the market and/or grid if ultimately subject to release in a public information request. Notably, the entities within ERCOT have spent years developing and refining their procedures, including implementing best practices, in ways that make operational sense. The proposal for publication (PFP) could require material changes if not wholesale rewrites of existing EOPs into a rigidly defined and voluminous singular document that would be overwhelming to the functional teams tasked with implementing the procedures, while imposing a significant compliance burden to re-write and manage changes under the proposed prescriptive processes, reducing resources available to support other compliance activities that have a more meaningful impact on reliability (both in and out of an emergency).

As a threshold matter, the Commission should note that an EOP is not necessarily a singular document distributed widely across an organization, but rather a compendium of procedures that are implemented by various teams across an organization in response to certain emergency conditions. The proposed requirement to formally consolidate the EOP into a single document with rigid change management and distribution documentation requirements could require a substantial undertaking, both for the initial production and for the ongoing maintenance requirements. The resulting product would be less useful for the implementing teams as well since the relevant information for each team would be buried in the much more voluminous consolidated EOP document. The Commission should take into account the time required to undertake such an effort as well as opportunities to make the process more efficient, such as defining “entity” broadly to include affiliates to eliminate duplication of effort.

Additionally, the requirement to provide an EOP “in its entirety” raises questions about the level of detail expected to be provided in the plans. It is crucial that entities only be required to provide the amount of information necessary for the Commission and ERCOT to be able to have assurance that emergencies will be handled appropriately and to meet the high level requirements of the rule. It should not be necessary and would not be appropriate for every detail behind every plan to be provided. Certain plans may be subject to other regulations that restrict their disclosure. Disclosure to any other entity and housed on any other network increases the risk that that plans can be found by those that intend harm to the market and system. The volume of the documents could also increase the administrative burden on the specific entity, ERCOT and the Commission. Further, any entity that goes above and beyond the stated requirements should not be penalized by being required to disclose additional information.

Furthermore, a material concern with the PFP requirement to file full, unredacted EOPs with the Commission is a public disclosure risk. EOPs by their nature contain sensitive and detailed information regarding critical infrastructure. The Commission should be thoughtful in how it receives information from affected entities and the resulting public disclosure risks associated with each. SB 3 explicitly contemplated that certain EOP content be redacted from EOPs submitted to the Commission and that full, unredacted EOPs be submitted to ERCOT. The PFP already contemplates that ERCOT’s EOP be “available for review” by the Commission or its designee, and TCPA suggests that the Commission extend this same treatment to the unredacted EOPs submitted to ERCOT while designating them as Protected Information under 16 TAC § 25.362 and the ERCOT Protocols.

The Commission should continue its precedent of keeping EOPs confidential from public disclosure pursuant to § 552.101 of the Texas Public Information Act, which excepts from disclosure information considered to be confidential by law. The EOPs should continue to be protected as part of Texas Homeland Security Act §§ 418.176 through 418.182. Section 418.181 makes clear that documents shall remain confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Release of EOPs may show vulnerabilities in the ERCOT system and at specific facilities that could be used in an attack on the ERCOT grid. The Commission should give significant weight to this concern when updating this rule to provide transparency to the Commission and ERCOT while mitigating the risks of publicly disclosing sensitive information.

The specific recommendations that follow are intended to strike a meaningful balance that helps to further the Commission’s commendable actions to ensure the reliability of the electric system while managing the compliance burden on covered entities, streamlining requirements or avoiding duplication of effort, and focusing efforts on issues that truly reflect risks to electric service without creating new risks.

**II. Specific Recommendations**

1. **Definition of “entity” should be included in subsection (b) and be broad enough to minimize duplication of efforts**

The PFP defines “entity” in subsection (a), which specifies applicability. To promote clarity, TCPA recommends that a definition of “Entity” be moved to subsection (b). Additionally, regardless of where that definition sits in the final rule, it should be clear that “entity” can be read to cover a group of affiliated entities such that the individual affiliated entities do not need to replicate the administrative efforts for documents that will largely be very similar if not exactly the same in some instances.

1. **Application.** This section applies to each electric utility, transmission and distribution utility, power generation company (PGC), municipally owned utility, electric cooperative, and retail electric provider (REP), and to the Electric Reliability Council of Texas (ERCOT). ~~The term “entity” as used in this section refers to the above-listed entities.~~
2. **Definitions.**

**(#) Entity** – an electric utility, transmission and distribution utility, PGC, municipally owned utility, electric cooperative, REP, or ERCOT. The singular term “entity” as used in this section may also include a grouping of affiliates of the above-listed entities.

1. **Clarifications to the definition of “Emergency” and “emergency operations plan”**

The PFP’s proposed new definition for what constitutes an “emergency,” must strike a difficult balance between being inclusive but not defining everything as an emergency. The definition’s catch-all provisions that government-declared “emergencies” constitute an emergency under the rule should (1) be rephrased to reference a disaster declaration; and (2) be phrased such that the declaration may, but will not always, constitute an emergency. For example, a hurricane may properly prompt the declaration of a disaster by the Governor, but the hazard presented would have no bearing on a generator operating in West Texas. Similarly the definition uses the catch-all phrase “presents credible risk to the continuity of electric service,” which places an ambiguous and expansive regulatory requirement on entities to predict all potential risks. Clarifying that this requirement extends only to “reasonably foreseeable and credible risks” would help to set appropriate expectations.

Similarly, the definition of “emergency operations plan” uses the definitive phrase “ensure continuity of adequate electric service in response to an emergency.” TCPA agrees with that objective in principle, but notes that each entity has limited control over the broader electric system and none can individually “ensure” continuity of electric service during an emergency.

Additionally, as discussed above, EOPs are in practice not necessarily just singular documents, but rather compilations of procedures that apply to different groups across the organization in different scenarios. They may include levels of detail that go beyond those required in the rule and/or that are subject to the rules and disclosure requirements of other entities or governing bodies. The EOP submitted under this rule should be permitted to be a compilation or summary of the relevant parts of documents meeting the requirements of the rule. Entities should not be required to provide details that go above and beyond requirements of the rule, pose additional risk through disclosure, or risk violating requirements of other entities or governing bodies.

Accordingly, TCPA recommends that the Commission modify these definitions as follows:

(3) **Emergency** -- any incident resulting from an imminent hazard or threat that endangers life or property or presents reasonably foreseeable and credible risk to the continuity of electric service. The term ~~includes~~ may include an emergency or disaster declared by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity.

(4) **Emergency operations plan** -- the plan and attached annexes, maintained on a continuous basis by an entity, intended to protect life, ~~and~~ property, and ~~ensure~~ continuity of adequate electric service in response to an emergency. For purposes of this rule, the plan may be a compilation or summary of the relevant parts of documents meeting the requirements of the rule, with a clear table of contents.

1. **Definitions of “Hazard” and “Threat” should either be stricken or revised to conform with the definition of “emergency”**

The definition of “emergency” rightly focuses the rule on risks that endanger life, property, or continuity of electric service. However, the proposed definitions of “hazard” and “threat” also include references to “information,” “operations,” and “the environment” without reference to continuity of electric service. These additions expand the definitions in ways that move beyond the focus of the rule while simultaneously constraining their effectiveness when the plain meaning of each term should suffice.

For example the Merriam-Webster definition of “hazard” includes “a source of danger” and the definition for “threat” includes “an expression of intention to inflict evil, injury, or damage.”[[3]](#footnote-4),[[4]](#footnote-5) These common definitions are reasonably applied to the definition of “emergency” in the PFP and arguably achieve the same function as the PFP’s proposed definitions, in that a hazard is a more general source of risk and a threat is a subset of hazards that reflect willful action and intent. As such, the Commission could delete the definitions of “hazard” and “threat” from the PFP and not lose any effect.

Should the Commission choose to retain these definitions in the rule, however, TCPA recommends that the definitions be modified to better align with the scope and intent of the rule:

(5) **Hazard** -- a natural, technological, or human-caused condition that is potentially dangerous or harmful to life, ~~information, operations, the environment, or~~ property, or the continuity of electric service.

(6) **Threat** -- the intention and capability of an individual or organization to harm life, ~~information, operations, the environment, or~~ property, or the continuity of electric service.

1. **Filing requirements recommendations**

Because TCPA recommends several changes to subsection (c) from the PFP, the individual issues are discussed, followed by consolidated redlines below.

* 1. **Any updated annual filing deadlines should fall on June 1, and any initial update filing deadline should fall on June 1 or 120 days from adoption of the final rule in this proceeding, whichever is later.**

The PFP contemplates requiring an annual EOP submission by February 15. However, the long-standing cadence for EOP updates has been to submit them on June 1 and December 1 – at the start of the respective peak load seasons. No rationale has been given for the proposed change in deadline, and for entities that have developed compliance calendars around a June 1 EOP update, continuing that deadline would be efficient and not interfere with other compliance activities that also fall in the early- to mid-February timeframe, a timeframe that may also still be subject to EOP activations.[[5]](#footnote-6)

The PFP also contemplates potentially material changes, additions, and reorganizations to EOPs compared to the status quo. Whereas EOPs currently represent a compilation of various emergency procedures, the PFP could require a wholesale review of – and in some instances rewriting of or complete reorganization of – EOP contents. With a final rule in this proceeding not likely completing until March 2022, an April 1, 2022 initial deadline is not practical for an initial compliance filing. TCPA respectfully requests that the Commission instead set the initial compliance deadline at the later of June 1 or 120 days from the final order in this rulemaking to allow sufficient compliance time.

* 1. **The summary after-action report requirement should not be required to be on a per-incident basis, and the rule should not presume that changes to the EOP were warranted.**

There are a large number of incidents each year that require a PGC or REP to utilize one or more component procedures of its EOP, most of which do not result in anything material to report (e.g., generator may go through its cold weather preparation activities in response to forecasted low temperatures but not experience any issues or temperatures may not meet the forecast, or entities may go through tried and true hurricane procedures multiple times within a year).

SB 3 does not require the information described by the PFP’s subsection (c)(1)(C), and therefore this provision should be removed from the final rule. TCPA proposes that the ongoing requirement to update EOPs to capture material changes will adequately address the issue that the PFP is signaling in proposed (c)(1)(C), in that entities will necessarily update their EOPs after experiencing an event that requires material revision. Requiring entities to annually provide a report stating when the entity had to activate its EOP, an after action report, including lessons learned, and an outline of changes the entity made to the EOP would be burdensome, misinterpret the use of EOPs, and imply a requirement that entities must activate their EOP on an annual basis (as well as make changes as a result).

EOPs may include procedures for innumerable events – including, pandemics, cyber incidents, physical security incidents, environmental incidents, weather events and other incidents. Every market participant may utilize its EOP differently, deploying portions of the EOP depending on the event and the impact on the operations and personnel of the particular market participant. A generic requirement that an after action report be submitted to the Commission after every circumstance where an EOP is utilized adds an unnecessary administrative burden on market participants that already face significant administrative regulatory burdens, when there may be little benefit. If the Commission were to consider such a requirement, it should only require a summary report of each type of emergency including lessons learned and any resulting EOP changes, if any, rather than a per-incident report.

* 1. **Required updates to EOPs should track statutory requirements requiring a Commission order.**

Utilities Code 186.007(b) specifies that “the commission shall require an entity subject to this section to file an updated [EOP] if it finds that an [EOP] on file does not contain adequate information to determine whether the entity can provide adequate electric services.” However, the PFP states that such a finding and requirement may come from Commission Staff.

While industry and Staff typically engage in productive, collaborative dialogue to address any potential issues, and the overhanging threat of Commission action always provides added weight to the direction and feedback from Staff to industry, it is important that entities retain their procedural rights should an irreconcilable difference with Staff arise. In such instances, it is appropriate then that the Commission issue an order, which would presumably allow both Staff and the affected entity to provide briefing on the specific point of disagreement for the Commission to consider.

Accordingly, the Commission should revise subparts (c)(4)(A)-(B) to have such determinations come from the Commission, consistent with the statutory language, while retaining the ability for Staff to suggest an entity agree to voluntary updates.

* 1. **EOPs reflect commercially- and security-sensitive information that should be held confidential and protected from disclosure.**

Information filed with the Commission is frequently subject to disclosure requests under the Public Information Act (PIA). EOPs currently include significant amounts information deemed confidential for commercial reasons or public safety and national security reasons. While there are legitimate bases for excepting disclosure of information under the PIA, the process is costly and burdensome, requiring briefing the Office of the Attorney General for each PIA exception request. By requiring EOPs to be filed on an unredacted basis with the Commission, the PFP would put EOPs at risk of disclosure. This would incentivize entities to revise EOPs to minimize inclusion of sensitive information, making the EOP less valuable to the entities, to the Commission, to ERCOT, and ultimately to the electricity consumers of Texas.

This does not mean abandoning the objective of providing greater Commission oversight of EOPs, however. Notably, the PFP does not propose that ERCOT’s EOP be filed this way with the Commission, but rather that ERCOT must make its EOP “available for review by the commission or the commission’s designee.” TCPA respectfully suggests that this is a better model for ensuring the Commission’s visibility into entities’ EOPs while helping to manage public disclosure risks.

Specifically, ERCOT currently requires that Resources (which is a broader term than just generators) provide their full EOPs to ERCOT,[[6]](#footnote-7) which is considered both protected information[[7]](#footnote-8) and ERCOT Critical Energy Infrastructure Information, and generally protected from disclosure.[[8]](#footnote-9) Under 16 TAC § 25.362(e), this information is generally protected from direct public disclosure under the PIA, though the Commission may still make a public disclosure determination in absence of a PIA request after a Staff request and opportunity for contested case proceeding to evaluate claims of confidentiality.

This approach represents a better balance of Commission access with protection of confidential information. It is also wholly consistent with SB 3. While SB 3 did specify that EOPs submitted for the report required by Utilities Code Section 186.007(a-1) be deemed public information, it also specifically notes that information deemed confidential by Government Code Ch. 552 or other state or federal law is protected and may be redacted from the filing with the Commission, while the EOP must be submitted to ERCOT in its entirety.[[9]](#footnote-10)

Accordingly, the Commission should modify the PFP’s filing requirements to require all entities with operations within the ERCOT power region to file their EOPs with ERCOT and for ERCOT to extend the same Protected Information treatment to those EOPs while providing access to the Commission. TCPA is not making recommendations for entities with operations outside of the ERCOT power region, so the redline below is only intended to show how TCPA’s recommendation for entities operating within ERCOT could be weaved into the PFP language.

* 1. **Consolidated redlines**

Below reflects the summation of recommended modifications to the PFP language based on (1) – (4) above. Note that the PFP skipped over (c)(2), so the redlines below reflect that correction:

1. (c) **Filing requirements.**
   1. An entity must file an EOP under this section by ~~April~~ June 1, 2022 or 120 days after the final order in Project No. 51841, whichever is later. Beginning in 2023, an entity must annually file an EOP no later than ~~February 15~~ June 1 in the manner prescribed by the commission.
      1. An entity with operations outside the ERCOT power region must file with the commission its unredacted EOP in its entirety and a public, redacted EOP.
      2. For an entity with operations within the ERCOT power region, the entity must submit its unredacted EOP in its entirety to ERCOT and must file with the commission a copy of its EOP in a redacted form with confidential portions removed.
      3. ~~Beginning in 2023, the annual EOP must include, for each incident in the prior calendar year that required the entity to activate its EOP, a summary after-action report that includes lessons learned and an outline of changes the entity made to the EOP as a result of EOP activations during the prior calendar year, if any.~~
2. (2) A person seeking registration as a PGC or certification as a REP must ~~file~~ submit an EOP to ERCOT and file with the commission a copy of its EOP in a redacted form with confidential portions removed at the time it applies for registration or certification with the commission~~, and must submit the EOP to ERCOT if it will operate in the ERCOT power region, no later than ten days after the commission approves the person’s certification or registration~~.
3. (3) Updated filings. An entity may submit an updated EOP to ERCOT and file an updated redacted copy of the EOP with the commission upon a request from staff for additional information, if staff believe the entity’s EOP does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency. An entity must ~~file~~ submit an updated EOP to ERCOT and file an updated redacted copy of the EOP with the commission within 30 days under the following circumstances.
4. ~~An entity must file an updated EOP if~~ The commission ~~staff~~ determines that the entity’s EOP ~~on file~~ does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.
5. ~~An entity must file an updated EOP~~ iIn response to ~~feedback provided from~~ a commission ~~staff~~ order.
6. ~~An entity must file an updated EOP i~~If the entity makes a significant change to its EOP. A significant change to an EOP includes a change that has a material impact on how the entity would respond to an emergency. The entity must file the updated EOP with the commission no later than 30 days after the change takes effect. Upon a showing of good cause, the deadlines for submitting an updated EOP in this subsection shall be extended by 30-day increments.
7. An entity with operations within the ERCOT power region must submit its updated EOP under paragraphs (c)(~~4~~3)(A), (c)(~~4~~3)(B), and (c)(~~4~~3)(C) to ERCOT ~~within 30 days of filing~~ at the same time the updated EOP is filed with the commission.
8. (4) Notwithstanding the other requirements of this subsection, ERCOT must maintain ~~a~~ its current EOP in its entirety, consistent with the requirements of this section, as well as the EOPs of other entities in their entirety, ~~and~~ available for review by the commission~~,~~ or the commission’s designee. EOPs maintained by ERCOT must be treated as protected information under Section 25.362.
9. **EOP content recommendations**

Because TCPA recommends several changes to subsection (d) from the PFP, the individual issues are discussed, followed by consolidated redlines below.

* 1. **EOP scope should be limited to “reasonably foreseeable” emergencies**

For the same reasons outlined regarding TCPA’s proposed revisions to the definition of “emergency” above, the Commission should modify the introductory text of subsection (d) to address every “reasonably foreseeable” type of emergency.

* 1. **Specifying individuals in maintenance, implementation, and distribution records is inefficient; specifying groups, teams, or some other more sustainable reference will reduce unnecessary and unproductive use of resources.**

The PFP includes a requirement in (d)(1)(B) that the EOP list “individuals” that are empowered to maintain, implement, and change the EOP. The Commission, ERCOT, and all affected entities would benefit from the administrative efficiency of allowing groups or teams as acceptable responses in lieu of individuals. This recommendation would reduce the need for updates solely to reflect personnel changes, while still drawing clear lines of responsibility and authority.

Similarly, (d)(2) in the PFP would require a “table” including individual names and titles of people “receiving the EOP” and the dates of distribution. While the intent appears straightforward, the practical implementation would be very difficult. This is because EOPs are not necessarily just singular documents, but rather compilations of procedures that apply to different groups across the organization in different scenarios. For large organizations covering multiple generation technologies, retail operations, and/or geographical locations, this would mean a large and complex presentation to identify and track each distribution/partial distribution. This would both require substantial effort to maintain and increase the cost of maintaining an EOP, while likely rendering any information included in it of diminished or eliminated value to the Commission. Instead, existing record keeping requirements should ensure that the Commission may access such information on an as-needed basis should the need ever arise. Accordingly, the Commission should omit the PFP’s subsection (d)(2) from the final rule, or at the very minimum eliminate the individual names and titles requirement in subpart (d)(2)(A).

* 1. **Revision control summary should either be stricken or only specify “material” changes.**

Also for administrative efficiency and prudent use of resources, the Commission should either forego the revision control summary or, at a minimum, only require that “material changes” be specified in the revision control summary. Such a summary could easily become voluminous in its own right, especially for the first required filing under the new proposed rule given the potential scope of EOP changes contemplated. Instead, existing record keeping requirements should ensure that the Commission may access such information on an as-needed basis should the need ever arise. Accordingly, the Commission should omit the PFP’s subpart (d)(1)(C) from the final rule, or at the very minimum modify subpart (d)(1)(C) to be limited to “material” changes.

* 1. **Highest-ranking officer attestation requirement would create unnecessary bottlenecks and provide no incremental value over current rule requirements.**

Also for administrative efficiency and prudent use of resources, the Commission should modify the requirement in the PFP’s subsection (d)(4) that the entity’s “highest-ranking” principal attest to the EOP readiness requirements enumerated in that subsection. The Commission should instead keep the current rule’s requirement that such an attestation is made by an officer with responsibility for the entity’s operations.

Limiting the attestation requirement to a single individual creates a significant and unnecessary compliance bottleneck. The EOP is by definition an operational planning document, so nothing is lost by allowing an officer with oversight of operations attest to the organization’s readiness. This does not prohibit the highest-ranking officer from making the proposed attestation, but does provide flexibility for other qualified individuals to certify the entity’s readiness. Accordingly, the Commission should revise the PFP’s subpart (d)(4) in the final rule to at a minimum permit an “an owner, partner, officer, manager, or other official with responsibility for the entity’s operations” complete the required attestation.

* 1. **The rule should not imply a requirement for EOPs to be distributed to “local jurisdictions.”**

Subpart (d)(4)(D) would require the EOP readiness attestation to include confirmation that the EOP or some summary of it be distributed to “local jurisdictions as appropriate.” There are few, if any, scenarios that would warrant distribution of an EOP or any of its component procedures to a local jurisdiction. To the contrary, EOPs contain significant amounts of commercially- or security-sensitive proprietary information that entities must take precautions to maintain confidentiality of. TCPA is not aware of any record indicating that local jurisdiction access to EOPs was an issue during Winter Storm Uri or any other emergency. Accordingly, there is not a demonstrated need for EOP distribution to local jurisdictions, and Commission should omit the PFP’s subpart (d)(4)(D) from the final rule.

* 1. **The National Incident Management System training requirement would create communication bottlenecks that might hinder rather than facilitate communications during an emergency.**

Subpart (d)(4)(F) in the PFP would require the EOP readiness attestation to include confirmation that the entity’s “emergency management personnel who are designated to interact with local, state, and federal emergency management officials” receive specific training. However, an entity may have multiple points of contact with local, state, and federal employees that could be considered “emergency management officials.” The training requirements contemplated appear to cover multiple days’ worth of training, which may not be practical for entire teams that may have contact with government officials during an emergency (e.g., government, regulatory, community, and media teams). Limiting communications to go through only employees that have completed the specified trainings may unnecessarily slow communications during an emergency. Additionally, it appears that the specified trainings are no longer available or have been re-versioned.[[10]](#footnote-11) While TCPA agrees with the need to have effective communication and coordination between government officials and industry during an emergency, there may be better options or opportunities for pursuing that objective than setting a static attestation requirement in the rule that may already be obsolete. This could actually be achieved by more generalized training requirement language in subpart (d)(4)(A). Accordingly, the Commission should strike the term “operational” from and slightly broaden subpart (d)(4)(A), then omit the PFP’s subpart (d)(4)(F) from the final rule. If necessary, Staff can work with entities outside of this rulemaking process to identify any training requirements that can best address the intent of that provision in the PFP.

* 1. **Communication requirements should be focused solely on issues related to continuity of electric service.**

Subpart (d)(5)(B) would require the EOP to include a communication plan for entities with generation operations. This is a reasonable component to include in EOPs but it should be clear that communications plans need not require communication to various groups as a result of every emergency. For instance, an entity with generation operations may initiate certain activities in response to an ERCOT Operating Condition Notice (OCN), which precedes declaration of an actual emergency by several steps. Such incidents do not warrant a communication step, and doing so would be an inefficient use of resources.

* 1. **Consolidated redlines.**

Below reflects the summation of recommended modifications to the PFP language based on (1) – (7) above, in addition to a minor typo correction in the opening paragraph:

1. (d) **Information to be included in the emergency operations plan.** An entity’s EOP must address both common operational functions that can be used for every reasonably foreseeable type of emergency and annexes that outline the entity’s response to the types of emergencies specified in subsection (e). Each entity’s EOP must include the following information~~;~~, if applicable. If a provision in this section does not apply to an entity, the entity must include in its EOP an explanation of why the provision does not apply.
   1. An approval and implementation section that:
      1. introduces the EOP and outlines its applicability;
      2. lists the individuals, groups, or teams responsible for maintaining and implementing the EOP, and those who can change the EOP;
      3. ~~provides a revision control summary which outlines and dates each change made to the EOP since the last time the EOP was adopted by the entity;~~
      4. provides a dated statement that the current EOP supersedes previous EOPs; and
      5. the date the EOP was most recently approved by the entity.
   2. ~~A record of distribution that contains the following information in table format:~~
      1. ~~titles and names of persons in the entity's organization receiving the EOP; and~~
      2. ~~dates of distribution.~~
   3. A list of emergency contacts for the entity, including identification of single points of contact during an emergency.
   4. An affidavit from the entity's ~~highest-ranking representative, official,~~ owner, partner, manager, ~~or~~ officer, or other official with ~~binding authority over~~ responsibility for the entity’s operations affirming the following:
      1. relevant ~~operating~~ personnel are familiar with and have received training on the contents and execution of the EOP, and such personnel are committed to following the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an emergency;
      2. the EOP has been reviewed and approved by the appropriate executives;
      3. required drills have been conducted; and
      4. ~~the EOP or an appropriate summary has been distributed to local jurisdictions as needed;~~
      5. the entity maintains a business continuity plan that addresses returning to normal operations after disruptions caused by an incident~~; and~~.
      6. ~~the entity's emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received National Incident Management System training, specifically IS-700.a, IS-800.b, IS-100.b, and IS-200.b.~~
2. **Annex content recommendations**

Because TCPA recommends several changes to subsection (e) from the PFP, the individual issues are discussed, followed by consolidated redlines below.

* 1. **There is no value gained by requiring a “separate and distinct” set of operational plans for cold/hot weather from those already required by the Commission’s weatherization requirements under 16 TAC § 25.55.**

Subparts (e)(2)(A) and (e)(2)(B) would require that the cold and hot weather emergency annexes for generators include “operational plans intended to mitigate the hazards of a [cold/hot] weather emergency, *separate and distinct from the weather preparation standards und §25.55*” (emphasis added). 16 TAC § 25.55 naturally has significant overlap with the EOPs, because while some of the weather emergency preparedness requirements of 16 TAC § 25.55 reflect structural and other physical preparations (e.g., insulation and heat tracing), other requirements are strictly operational (staffing plans, training, near-term procurement activities, installation of temporary wind breaks, draining of non-critical lines, etc.). In Texas, where generation resources must be designed for reliable operation through the hotter peak load months, winter weather preparedness is necessarily a combination of physical preparation and operational planning, and the line between the two is not always clear (and it does not need to be).

There is no clear reason for requiring a separate, distinct set of operating procedures to address extreme weather, as that would simply require duplication of effort for precisely the same activity set. Accordingly, the Commission should omit the “separate and distinct” language from the PFP’s subparts (e)(2)(A) and (e)(2)(B) in the final rule.

* 1. **A targeted “communications plan” for “socializing lessons learned” from prior cold/hot weather events is more flexible and functional than a requirement to pull personnel for specific meetings before/after an event.**

Subparts (e)(2)(A)(iv) and (e)(2)(B)(iv) in the PFP would require “pre- and post-weather emergency meetings” for reviewing lessons learned and staffing/supply stocking plans are in effect. TCPA supports the objective of this requirement and hopes that it is standard operating procedure across the entire generating community. However, specifying that the activity must take the form of “pre- and post-weather emergency meetings” is more prescriptive than necessary. Specifically, meetings are not always the most efficient means to communicate, and not every emergency will require significant pre- and post-activities. Instead, simply requiring that generators have *a plan for socializing* lessons learned with relevant personnel and to ensure adequate supplies and staffing should be sufficient to achieve the Commission’s intent without overprescribing the manner in which that intent is achieved. The Commission should revise the PFP’s subparts (e)(2)(A)(iv) and (e)(2)(B) (iv) in the final rule accordingly.

* 1. **The cybersecurity annex should be carefully scoped to avoid heightened risks associated with public disclosure, and the open-ended “any additional annexes as needed or appropriate to the entity’s particular circumstances” requirement can be omitted from the final rule as duplicative.**

Cybersecurity issues have and intricate overlay of various legal and regulatory jurisdictions, as well as an always-evolving threat and mitigation dynamic, that add sensitivities to the need to control the documentation and distribution of information publicly regarding cybersecurity threats and vulnerabilities. Additionally, with the increased risk of public disclosure of EOPs if filed with the Commission, having a consolidated repository of cybersecurity EOP annexes could increase the risk of the Commission becoming the focus of a cybersecurity attack aimed at gaining access to the EOP annexes. As worded, the requirement for a cyber-security annex appears broad and to afford the entity discretion as to what information to file. It is essential that Commission only interpret this to require high-level information on the existence of a plan and information concerning it. To the extent that any other interpretation is intended, the language should be amended to clearly allow only high-level information to be submitted to meet the requirement.

Additionally, the PFP’s provision in various parts of subsection (e) that EOPs include “any additional annexes as needed or appropriate to the entity’s particular circumstances” is unnecessary, as that requirement is already more efficiently established in subsection (d)(9) (requiring that the EOP include “[e]ach relevant annex as detailed in subsection (e) and other annexes applicable to an entity”). The duplicative individual provisions in subparts (e)(1)(I), (e)(2)(I), (e)(3)(E), and (e)(4)(F) can therefore be left out of the final rule without loss of effect.

* 1. **Consolidated redlines.**

Below reflects the summation of recommended modifications to the PFP language based on (1) – (3) above:

1. (e) **Annexes to be included in the emergency operations plan.**
   1. (no change)

(A)-(H) (no change)

~~(I) Any additional annexes as needed or appropriate to the entity’s particular circumstances.~~

* 1. (no change)
     1. A cold weather emergency annex that includes:
        1. operational plans intended to mitigate the hazards of a cold weather emergency~~, separate and distinct from the weather preparations standards under §25.55~~;
        2. – (iii) (no change)

1. a ~~requirement for pre- and post-weather emergency meetings~~ plan to review and socialize lessons learned from past cold weather emergency incidents with relevant personnel and to ensure necessary supplies and personnel are available through ~~the~~ a weather emergency.
   * 1. A hot weather emergency annex that includes:
2. operational plans intended to mitigate the hazards of a hot weather emergency~~, separate and distinct from the weather preparations standards under §25.55~~;
3. – (iii) (no change)
4. a ~~requirement for pre- and post-weather emergency meetings~~ plan to review and socialize lessons learned from past hot weather ~~emergency~~ incidents with relevant personnel and to ensure necessary supplies and personnel are available through ~~the~~ a weather emergency.

(C) – (F) (no change)

1. A cyber security annex; and
2. A physical security incident annex~~; and~~.
3. ~~Any additional annexes as needed or appropriate to the entity's particular circumstances.~~
   1. A REP must include in its EOP the following annexes:
      1. A pandemic and epidemic annex;
      2. A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;
      3. A cyber security annex; and
      4. A physical security incident annex~~; and~~
      5. ~~Any additional annexes as needed or appropriate to the entity's particular circumstances.~~

(~~4~~3)(no change)

* + 1. – (D) (no change)

1. A physical security incident annex~~; and~~
2. ~~Any additional annexes as needed or appropriate to ERCOT's particular circumstances.~~
3. **Formal reporting requirements should be set by Commission order.**

For the same reasons outlined above regarding protection of entities’ right to due process in the event of a disagreement with Staff, the PFP’s provision in subsection (g) that “commission staff may require an affected entity to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff” should be revised to specify that *the Commission* may require such reporting. This distinction is only for the reporting requirement in subsection (g), as it would be inefficient and potentially infeasible to produce a Commission order for the in-event updates contemplated in the first part of subsection (g). The date specification can also be deleted, as any Commission order would presumably set such a deadline for response.

(g) **Reporting requirements**. Upon request by commission staff during an activation of the State Operations Center by TDEM, an entity must provide updates on the status of operations, outages, and restoration efforts. Updates must continue until all incident-related outages are restored or unless otherwise notified by commission staff. After an emergency, the commission ~~staff~~ may require an affected entity to provide an after action or lessons learned report and file it with the commission ~~by a date specified by commission staff~~.

**III. Conclusion**

TCPA appreciates the Commission’s efforts to implement provisions of Senate Bill 3 and bolster public confidence in the reliability of the electric system, as well as the opportunity to submit these comments. As the Commission moves towards finalizing the rule, it is critically important that it maintain focus on the rule’s purpose: supporting quality emergency preparedness plans that work across a diverse range of entities and without creating undue regulatory burdens. We look forward to working with Commission Staff and all other stakeholders to finalize a version of the rule that will achieve this goal.

Dated: January 4, 2022

Respectfully submitted,

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**PROJECT NO. 51841**

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| --- | --- | --- |
| **REVIEW OF 16 TAC § 25.53 RELATING TO ELECTRIC SERVICE EMERGENCY OPERATIONS PLANS** | **§**  **§**  **§** | **BEFORE THE**  **PUBLIC UTILITY COMMISSION**  **OF TEXAS** |

**EXECUTIVE SUMMARY OF TCPA COMMENTS**

* In general, the rule should:
  + Strike a balance that improves access for the Commission to information that has a practical value in supporting continuity of adequate electric service during an emergency while not burdening entities, ERCOT or Commission Staff with over-specified compliance and oversight obligations;
  + Reflect that an EOP is not necessarily a singular document distributed widely across an organization, but rather a compendium of procedures that are implemented by various teams across an organization in response to emergency conditions; and
  + Protect EOPs, to the extent feasible, from public disclosure of sensitive information that might create risks to the entities, ERCOT, Commission, or the grid.
* Definition recommendations:
  + Definition of “entity” should be included in subsection (b) and be broad enough to minimize duplication of efforts.
  + Definitions of “Emergency” and “emergency operations plan” should be clarified to appropriately reflect “reasonably foreseeable” risks, include reference to disaster declarations, that not every emergency or disaster declaration is an “emergency” under the rule, and that an EOP consisting of compiled and organized procedures that meet the requirements of the rule may be deemed compliant.
  + Definitions of “Hazard” and “Threat” should either be stricken or revised to conform with the definition of “emergency.”
* Filing requirements recommendations:
  + Any updated annual filing deadlines should fall on June 1, and any initial update filing deadline should fall on June 1 or 120 days from adoption of the final rule in this proceeding, whichever is later.
  + The summary after-action report requirement should not be required to be on a per-incident basis, and the rule should not presume that changes to the EOP were warranted.
  + Required updates to EOPs should largely track statutory requirements requiring a Commission order, while still encouraging entities and Staff to work together to manage the need for updating EOPs.
  + EOPs reflect commercially- and security-sensitive information that should be held confidential and protected from disclosure. Specifically, entities with operations in ERCOT should only submit their unredacted EOPs to ERCOT and redacted copies with the Commission, and ERCOT should maintain Commission access to all unredacted EOPs while treating them as Protected Information for purposes of 16 TAC § 25.362.
* EOP content recommendations:
  + EOP scope should be limited to “reasonably foreseeable” emergencies.
  + Specifying individuals in maintenance, implementation, and distribution records is inefficient; specifying groups, teams, or some other more sustainable reference will reduce unnecessary and unproductive use of resources.
  + Revision control summary should either be stricken or only specify “material” changes.
  + Highest-ranking officer attestation requirement would create unnecessary bottlenecks and provide no incremental value over current rule requirements, and should be omitted from the final rule.
  + The rule should not imply a requirement for EOPs to be distributed to “local jurisdictions.”
  + The National Incident Management System training requirement would create communication bottlenecks that might hinder rather than facilitate communications during an emergency. Such specific training recommendations can be better addressed more flexibly outside of the rule, while the rule can still support the intended effect through slight modifications to subpart (d)(4)(A).
  + Communication requirements should be focused solely on issues related to continuity of electric service.
* EOP annex content recommendations:
  + There is no value gained by requiring a “separate and distinct” set of operational plans for cold/hot weather from those already required by the Commission’s weatherization requirements under 16 TAC § 25.55. This language should be omitted from the final rule.
  + A targeted “plan” for “socializing lessons learned” from prior cold/hot weather events is more flexible and functional than a requirement to pull personnel for specific meetings before/after an event.
  + The cybersecurity annex should be carefully scoped to avoid heightened risks associated with public disclosure, and the open-ended “any additional annexes as needed or appropriate to the entity’s particular circumstances” requirement can be omitted from the final rule as duplicative of other rule requirements.
* Formal reporting requirements under subsection (g) should be set by Commission order.

1. [Proposed Rules Title 16 (texas.gov)](https://www.sos.texas.gov/texreg/archive/December172021/Proposed%20Rules/16.ECONOMIC%20REGULATION.html#12) [↑](#footnote-ref-2)
2. TCPA member companies participating in these comments include: Calpine, Cogentrix, EDF Trading North America, Exelon, Luminant, NRG, Shell Energy North America, Talen Energy, Tenaska, TexGen Power, and WattBridge. [↑](#footnote-ref-3)
3. <https://www.merriam-webster.com/dictionary/hazard> [↑](#footnote-ref-4)
4. <https://www.merriam-webster.com/dictionary/threat> [↑](#footnote-ref-5)
5. e.g., generating capacity reports are due by the last working day of February (16 TAC § 25.91(c)), electric utility service quality reports are due on February 14 (16 TAC § 25.81), natural gas capacity reports are due on February 14 (unless waived; see 16 TAC § 25.172(h)), generator emissions scorecard reports due to ERCOT on March 1 (16 TAC § 25.476(e)(3), REP annual reports are due on March 5 (16 TAC § 25.107(i)(5)), etc. [↑](#footnote-ref-6)
6. ERCOT Nodal Protocols Section 3.21 [↑](#footnote-ref-7)
7. ERCOT nodal protocols Sections 1.3.1.1(1)(bb) [↑](#footnote-ref-8)
8. ERCOT Nodal Protocols Section 1.3.2.1(e); note that this provision also includes EOPs for ERCOT and for transmission and distribution service providers (TDSPs). [↑](#footnote-ref-9)
9. *See* Utilities Code Sec. 186.007(f). [↑](#footnote-ref-10)
10. It appears that each of the trainings has a different letter version associated with it. For example, IS-700.a redirects to IS-700.B (<https://training.fema.gov/is/courseoverview.aspx?code=IS-700.b>), IS-800.b redirects to IS-800.D (<https://training.fema.gov/is/courseoverview.aspx?code=IS-800.d>), IS-100.b redirects to IS-100.C (<https://training.fema.gov/is/courseoverview.aspx?code=IS-100.c>), and IS-200.b redirects to IS-200.C (<https://training.fema.gov/is/courseoverview.aspx?code=IS-200.c>). [↑](#footnote-ref-11)