



LEGISLATIVE & REGULATORY UPDATE

Volume 7 – January 14, 2022

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 Houston Electric Generation Facility Tours

TCPA's Houston-area tours were a great success. Lawmakers, regulators and staff visit three different generating facilities, discussing winterization efforts, fuel availability and outlook for Winter 2022. To date, TCPA members have spent more than \$110 million on additional weatherization components. Thank you to Calpine, NRG and WattBridge who made the visits possible, and to our guests who made time for the tour.



II. Cold Snap Impact Gas Availability

The new year saw Texas' first notable cold front of the winter, during which daily natural gas production in the state's top energy-producing region dropped by about 20%, causing disruptions to the fuel supply for some electric power facilities. At least seven gas companies reported frozen equipment that necessitated flaring or venting gas, even though their electric power remained on. Fortunately, although natural gas is the main fuel for much of Texas' electric power



generation, the disruption did not impact generators' ability to provide power to meet the needs of the grid.

However, the disruption to the gas supply during an otherwise ordinary Texas cold front could cast doubt on whether the state's gas companies are ready for more extreme winter weather, should it occur. The Texas Railroad Commission recently finalized a new rule to designate critical natural gas facilities that electric utilities will endeavor to protect from electricity cut offs during winter storms or other weather emergencies, but weatherization requirements and supply chain mapping for the gas industry remains a concern.

III. Texas Energy Reliability Council (TERC) Meetings

Created by S.B. 3, the Texas Energy Reliability Council (TERC) is made up of leaders from the Railroad Commission of Texas (RRC), the Electric Reliability Council of Texas (ERCOT), the Public Utility Commission of Texas (PUCT), and members of the natural gas and electricity industries, to "ensure that the energy and electric industries in this state meet high priority human needs and address critical infrastructure concerns" and to "enhance coordination and communication in the energy and electric industries in this state."

TERC members have now been named and are meeting regularly to foster communication and planning between agencies, should curtailment be necessary. By November 1 of each even-numbered year, the TERC shall submit to the legislature a report on the reliability and stability of the electricity supply chain in Texas. The report must also include recommendations to strengthen the supply chain and decrease frequency of extended power outages caused by a disaster.

IV. SEPAC APPOINTMENTS

Gov. Greg Abbott has appointed Daniel Hall, Castlen Moore Kennedy, Joel Mickey, and Phil Wilson to the State Energy Plan Advisory Committee (SEPAC), and named Wilson as chair of the Committee. SEPAC will ultimately be composed of 12 members, appointed by the governor, lieutenant governor, and speaker. As prescribed by S.B. 3, by September 1, 2022, SEPAC shall prepare a comprehensive state energy plan to: evaluate barriers in the electricity and natural gas markets that prevent sound economic decisions and recommendations to remove those barriers; evaluate methods to improve the reliability, stability, and affordability of electric service in this state; and assess the electricity market structure and pricing mechanisms used in this state.

- **Daniel Hall** of Hurst is the Vice President of Measurement and Billing for Oncor;
- **Castlen Moore Kennedy** of Houston is Vice President of Communications and Public Affairs for the Apache Corporation;



- **Joel Mickey** of Georgetown is an energy and power industry consultant. Previously, he worked for ERCOT for almost 20 years, as well as Altra Energy and Houston Lighting & Power;
- **Phil Wilson** of Austin is the General Manager for the Lower Colorado River Authority. Previously, he served as the Acting Executive Commissioner of the Texas Health and Human Services Commission, Executive Director for the Texas Department of Transportation, and Senior Vice President of Public Affairs for Luminant.

V. TCPA Filings to PUCT on Emergency Operations Plans (PUCT Project 51841) and Power Outage Criteria (PUCT Project 52287)

On January 4th, TCPA submitted comments to the PUCT concerning proposed 16 Tex. Admin. Code § 25.53 relating to Emergency Operations Plans (EOPs), as published in the *Texas Register* on December 17, 2021. The rule is intended to support PUCT visibility to and reporting on EOPs across the electric industry, as required by SB 3. TCPA's comments sought to balance this objective with concerns about protecting confidential information from public disclosure and promoting administrative efficiencies to reduce the compliance burden of the proposed rule. Examples include:

- Modify rule to recognize EOPs as compendiums of procedures that are implemented by various teams across an organization in response to certain emergency conditions, rather than a singular document widely distributed across an organization;
- Utilize ERCOT as a conduit to increase PUCT visibility into EOP contents while limiting the public disclosure risk of protected information;
- Broaden certain document control and reporting requirements to distill key information, instead of granular details that would increase time/effort without adding material value;
- Reduce compliance bottlenecks without loss of effect by allowing any officer with operations oversight (rather than only the CEO) to submit EOP attestations

TCPA's full filing can be read [HERE](#).

On January 10th, TCPA submitted comments to the PUCT concerning proposed 16 Tex. Admin. Code § 25.57 relating to Power Outage Alert Criteria, as published in the *Texas Register* on December 31, 2021. Our comments were minimal, as the published proposal took into consideration many of the concerns expressed by TCPA member companies in individual comments filed previously. In summary, TCPA's remarks reflected the following concerns:

- TCPA believes that the message about the risk of power outage will be most clearly conveyed if standard PUCT communication practices during certain other events are not issued in such a way as to inadvertently signal a likely or already-initiated power outage. TCPA suggests that the PUCT's "power outage alerts" focus on the primary message of the power outage risk, and utilize other means to communicate additional information, such as details regarding known causes and contributing factors, etc.



TCPA's full filing can be read [HERE](#).

VI. TCPA Comments to the RRC on Curtailment Rules

On January 7th, TCPA filed comments in response to RRC's Proposed Amendments to 16 TAC §7.455 and Proposed Repeal of 16 TAC §7.305. In summary, TCPA comments made the following points:

- While TCPA supports the Commission's determination that electric generation facilities should be one of the top priorities during a curtailment event, we believe placing electric generation facilities into the same priority tier as other "human needs customers" is the best approach.
- Furthermore, it is crucially important that the rule include a methodology and directive to estimate the total gas supply that is curtailable. Failure to do so would make it impossible to ensure that this rule will solve for emergencies or if there is de minimis gas covered.
- The Commission should identify and publish which pipeline operators and gas utilities are subject to the Curtailment Rules and which are not.
- Those subject to the Rules should map out their systems to designate flow paths and volumes by criticality.
- The Commission provide greater clarity as to what qualifies as a curtailment event, or in the alternative, for intrastate gas pipelines to provide a definition of what they consider a curtailment event to be part of their tariff. This will allow shippers and end users to know the specific conditions under which a curtailment event will occur, instead of relying on a subjective interpretation.
- The prioritization in the Proposed Rules should include both firm deliveries of natural gas to an entity and entities that have firm transportation capacity. Winter Storm Uri clearly demonstrated that "firm supply" of natural gas is an illusory concept, whereby supply can be cancelled due to a Force Majeure claim, regardless of the claim's validity. This risk can be at least disciplined by requiring that the intrastate gas markets have the same transparency found on interstate markets.
- To ensure that a Force Majeure claim is legitimate, there must be a requirement that entities that declare Force Majeure and their affiliates submit the details of all gas transactions in the vicinity of the receipt point to ensure no other sales were made.
- To subject Force Majeure claims to market discipline, TCPA also recommends the following measures:
 - Require that intrastate pipelines and storage facilities post daily the capacities of, and volumes flowing through receipt and delivery points and mainline segments on Electronic Bulletin Boards in order to make available the information needed to track daily flows of natural gas throughout Texas (consistent with current interstate practices);



- Require that intrastate pipelines and storage facilities publish an index of shippers and corresponding customers showing transportation agreement details;
- Require gas pipelines to establish tariff provisions permitting shippers and their agents to offset imbalances accruing on different contracts and to trade imbalances where such imbalances have similar operational impact on the pipeline's system; and
- Require intrastate pipelines to follow Federal Energy Regulatory Commission affiliate rules that are designed to prevent affiliated entities from gaining an advantage over their competitors through relationships with their affiliated pipeline, as well as adopt codes of conduct for interactions between such entities, such as but not limited to: arms-length transactions; separate staff and facilities; and the offering of same terms, information, and services to all shippers.

TCPA's full comments can be reviewed [HERE](#).

VII. TCPA Comments to ERCOT on NPRR 1097

On January 7th, TCPA provided comments to ERCOT regarding Nodal Protocol Revision Request (NPRR) 1097. In summary, our comments reflected the following concerns:

- TCPA understands the desire for outage transparency in emergency situations to better inform the public. The desire for transparency requires that:
 - Information must be meaningful and digestible in order to be beneficial to the public;
 - The public and market participants be protected from release of information that would be perceived as a useless "data dump" to the average person, but which is competitively sensitive and could be used by competitors to advantage their own position while not driving any additional value in the market.
- Similarly, the goal is to provide meaningful information about the cause of outages and informed expectations for resolution that will bring generation back on-line and at expected capacity. The proposed requirement of three days is often insufficient time to understand an outage cause, and a resolution timeframe is often unknown and cannot be provided with confidence. Thus, the information may be ambiguous and uninformative. The TCPA proposed changes would provide a seven-day timeframe that will yield better information for the public and reduce the potential for information about competitors' outages to drive inefficient outcomes.
- Other proposed changes include aggregating outages by fuel type, which provides more meaningful information about which fuel types are seeing outage problems and on what scale, as opposed to a data dump of codes, names, and numbers that is nearly impossible to understand without technical expertise and is indecipherable to the average person.

TCPA's full filing can be reviewed [HERE](#).



- VIII. **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 51871 – Review of the ERCOT Scarcity Pricing Mechanism
 - ii. PUCT Project 51825 – Investigation Regarding the February 2021 Winter Weather Event
 - iii. PUCT Project 51840 – Weatherization
 - iv. PUCT Project 52312 – Administrative Penalties
 - v. PUCT Project 52691 – ERCOT Weather Study
 - vi. PUCT Projects 52785 & 52787 – ERCOT Comprehensive Checklist Forms for Weatherization Inspections
 - vii. PUCT Project 52786 – ERCOT Compliance Reports of Generation Resource Winter Readiness
 - viii. PUCT Project 51841 – Emergency Operations Plans
 - ix. PUCT Project 51888 – Review of Critical Load Standards and Processes
 - x. PUCT Project 52287 – Power Outage Alert
 - xi. PUCT Project 52345 – Critical Infrastructure Designation & Mapping
 - xii. PUCT Project 52373 – Market Design
 - xiii. PUCT Project 52631 – Review of HCAP
 - xiv. ERCOT NPRR 1087 – Critical Loads
 - xv. ERCOT NPRR 1086 – Systemwide Offer Cap
 - xvi. ERCOT NPRRs 1084 & 1097 – Outage Reporting
 - xvii. RRC – Critical Designation of Natural Gas Infrastructure
 - xviii. RRC – Weatherization of Natural Gas Components
 - xix. RRC – Penalty Guidelines for Violations



- xx. 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 this past fall.
- e. TCPA members are undertaking weatherization and other 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 conducted inspections of plants during December, and reported that resources were by and large in compliance and ready for winter.
 - 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.



IX. Additional TCPA Legislative Activities

- a. TCPA Roadshow: Having concluded the Houston-area tours, the Roadshow is projected to include meetings with legislators in Dallas/North Texas at the end of April and in San Antonio and South Texas during the Summer of 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.

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