



## LEGISLATIVE & REGULATORY UPDATE

Volume 10 – April 15, 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, Constellation (formerly 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 files comments on Proposed RRC Curtailment Standards Modifications

Last week, TCPA filed Supplemental Comments with the RRC regarding proposed changes to 16 TAC §7.455 and 16 TAC §7.305. The comments were filed based on two contributing factors: (1) RRC Staff did not incorporate TCPA's recommended changes and (2) RRC Staff suggested further changes that could prevent sufficient gas supply allocations in a curtailment event. RRC adopted the curtailment rule on April 12, and as anticipated, declined to address any of TCPA's concerns (which were shared and independently voiced by other commenters).

TCPA still believes that electric generation facilities should be included in the definition of "human needs customers" and place them in the same priority tier as other human needs customers when supplies are curtailed. Additional infrastructure included in "human needs," such as water and wastewater treatment facilities, exacerbates the supply chain risks since those facilities will receive gas priority over electric generators in an emergency situation. Failure to include electric generators in the definition of "human needs customers" risks not only electric power outages during curtailment events, but also heating outages, since even gas-powered home heaters need electricity to function. Prioritization should also include a mechanism to ensure that Force Majeure claims and penalties are legitimate, and a requirement for curtailment events to be defined within intrastate pipelines tariffs.

You can read the TPCA comments [HERE](#) and the Railroad Commission's order [HERE](#).



## II. ERCOT NRR 1108 Comments – Relating to ERCOT’s Process for Approving or Denying Resource Outage Requests

On March 25, TCPA filed comments regarding ongoing ERCOT planned outage coordination and approval discussions. Generators must schedule planned outages during non-peak weather seasons to be ready for the high demand summer and winter seasons. ERCOT has proposed to implement a requirement from SB 3 in a way that would strictly limit generators’ ability to schedule their outages based on criteria wholly outside of their control (like the unpredictability of wind). TCPA believes that ERCOT’s proposal disadvantages thermal generation relative to wind and solar resources. Wind and solar outages are taken as a given, whereas thermal generation outages are subject to ERCOT approval, denial and discretion based on a methodology that resource owners have concerns about.

ERCOT’s proposed methodology for thermal generators does not account for their own conservative system operations, marked by the unprecedented use of Reliability Unit Commitment (RUC), resulting in added wear and tear, which drive more operational maintenance needs. Increased outage restrictions and limited repair windows will make it more difficult to respond to near-term weather events or other logistical hurdles, potentially eroding grid readiness and increasing the risk of long-term generation inadequacy. In the extreme, resources that are not allowed to take required outages will be forced offline to avoid breach of warranty requirements and to maintain compliance with safety protocols. Moreover, resources that adjust outages in response to system reliability needs should be moved to the front of the line during that outage season, rather than be penalized for assisting in meeting near-term dependability.

You can read TCPA’s full comments [HERE](#). TCPA filed an alternative compromise with ERCOT on April 12 to ensure ERCOT compliance with SB 3 while providing additional time for stakeholders and ERCOT to address the important issues identified by thermal generators. Those comments can be read [HERE](#).

## III. TCPA Letter to the PUCT Regarding the STEC Reliability Proposal

TCPA members shared a letter with PUCT leadership on March 25<sup>th</sup> calling for expeditious review and implementation of comprehensive market design reforms. To date, the PUCT has yet to adopt a clear market redesign direction for Phase II and awaits the hiring of a new consultant and the subsequent analysis. TCPA requested that the South Texas Electric Cooperative’s (STEC) reliability proposal be considered as part of Phase II market redesign. Certainty within the regulatory market is paramount. A decision regarding the Phase II design changes must be made prior to year-end.

You can read TCPA’s letter [HERE](#) and STEC’s proposal [HERE](#).



#### IV. **Senate Interim Charges Released**

Last week, Lt. Governor Dan Patrick released interim charges for Senate committees to review during the remainder of 2022. Among the key energy charges:

- **Senate Business & Commerce:** Texas electric grid, including weather preparedness, transmission planning, maintenance scheduling, and the natural gas supply chain. Study the consequences of increased electric vehicle usage and charging on the generation, transmission and distribution, and retail sectors of ERCOT, and evaluate their potential impact on increased electric demand and grid reliability. Evaluate potential benefits of real-time transparency of the intrastate gas market with respect to the functions of ERCOT and the Texas Energy Reliability Council. Examine the growth of renewable energy generation in the state and evaluate its impact on grid reliability. Make recommendations to strengthen the reliability of the grid, and meet the future generation needs of ERCOT through new and existing dispatchable generation. Assess plans to expeditiously add new dispatchable generation. Monitor the implementation of Senate Bill 2 and Senate Bill 3, 87<sup>th</sup> Legislature.
- **Senate Natural Resources & Economic Development:** Natural Gas Storage: Study the economic benefits of expanding the state's underground natural gas storage capacity and infrastructure. Investigate and make recommendations for additional natural gas transportation opportunities.

TCPA is continuing conversations with lawmakers and stakeholders about the implementation of new requirements passed by the 87<sup>th</sup> Legislature and looks forward to future hearings.

#### V. **TCPA Files Comments Regarding Firm Fuel Supply Service – PUCT Project 53298**

Last week, TCPA filed comments in response to PUCT staff questions related to Firm Fuel Supply Service (FFSS). Lack of transparency on the intrastate gas system makes it difficult to identify specific geographic chokepoints where additional firm fuel resources may be beneficial. TCPA supports aligning the Texas intrastate natural gas market with national standards. This is best achieved by providing real-time information regarding gas flows at various receipt points as well as gas prices at certain system receipt and delivery points.

This change would mirror similar regulations around interstate transportation of natural gas. It will also be useful in determining whether future procurements should provide for geographically diverse firm fuel and sparking additional investment in areas where lack of firm fuel inhibits reliability during extreme cold temperatures.

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



## VI. Office Holder Letters

In March, RRC Chairman Wayne Christian shared a letter with lawmakers as a follow-up to his testimony before the Senate Business & Commerce Committee on March 9<sup>th</sup>. He clarified what the RRC believes are the limits of its ability to regulate the oil and gas industry in Texas. His letter indicates that RRC has limited authority to protect market participants against excessive transmission rates for gas pipelines – a topic of much discussion at the hearing – and the Chairman underscored that “[t]he Commission, as a practice, does not review or set negotiated rates (i.e. private contracts) unless there is a formal complaint filed at the Commission alleging that the rate is ‘unreasonably preferential, prejudicial or discriminatory.’ The Commission, if it determines that the rate does not comply with the statute, will set the rate, but only on a prospective basis.”

TCPA remains concerned that lack of transparency on the intrastate gas system makes it difficult for market participants to assess whether rates are reasonable and collect the data required to file a successful complaint. Lawmakers may want to consider creating additional tools to help rectify market manipulations by developing the means and authority to remedy a past rate and to assess damages against a violator.

Meanwhile, Senators Charles Schwertner and Robert Nichols filed a joint letter with the PUCT in March regarding the implementation of SB 3 and legislative intent. They pointed to provisions of S B 3 directing the Commission to “modify the design, procurement, and cost allocation of ancillary services for the region in a manner consistent with cost-causation principles and on a nondiscriminatory basis” as well as tasking the Commission to “develop and deploy a competitive reliability service that results in dispatchable generation that is reliable during all weather conditions.” They expressed concerns that the current PUCT proposals “do not fully encompass these directives” and encouraged the Commission to “consider cost-causation principles and appropriate cost-allocation when evaluating all potential market design options.”

The Senators’ letter can be read [HERE](#).

## VII. TCPA Files Comments Regarding Market Design – PUCT Project 53191

In March TCPA filed comments with the PUCT on the agency’s proposal to repeal and replace sections of the Texas Administrative Code related to ERCOT grid reform, as directed by S.B. 3. Of particular importance, TCPA remains concerned that during extreme events when grid reliability is at a premium, generators regularly incur additional operating expenses that may not be recouped (such as fuel costs, backup fuel procurement, chemical supplies, water treatment expenses, heating/cooling equipment, and additional staffing).



TCPA believes state policy must be updated to reflect situations in which generators are dispatched for reliability purposes. Currently generators are given zero assurance that they will not be forced to operate at a loss under these circumstances. Whether it's the Scarcity Pricing Mechanism or some other tool being used under the name of reliability, failure to provide generators the ability to recover their operating expenses sends a message to the market that meeting reliability goals comes at a risk to shareholders' bottom line, which ultimately could deter investment. Section 18 of SB 3 included as part of the emergency pricing program that the PUCT was tasked with establishing a requirement that generators be able to recover their "reasonable, verifiable operating costs;" That provision has yet to be implemented, but TCPA looks forward to working with the PUCT when that project is opened.

TCPA continues to support a holistic implementation of wholesale market design elements, with a goal of increasing the amount of dispatchable generation in ERCOT through regulatory certainty, without reaching scarcity, for reliable resources.

You can read TCPA's comments [HERE](#).

### VIII. Additional TCPA Legislative Activities

TCPA Roadshow: Next stop for the TCPA Roadshow is scheduled to be **May 18 & 19** in the Dallas/North Texas area. **Be on the lookout for additional information in the coming days.** We anticipate concluding the Roadshow in San Antonio and South Texas during the Summer of 2022. If you or your staff are interested in joining a tour, please [contact TCPA](#) to let us know.

### IX. 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. In addition to the information provided in these newsletters regarding ongoing implementation and actions already undertaken by generators, here are details 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 87<sup>th</sup> 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. Already generators and transmission & distribution utilities are required to be weatherized to greater standards and 99% passed the inspections performed by ERCOT ahead of this winter.
- 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
  - ii. ERCOT has a new interim CEO, new board members and new staff
  - iii. The recently formed Texas Energy Reliability Council (TERC) has met regularly to discuss the intricacies of the electric and natural gas industries and find areas for improvement. A report with legislative recommendations will be issued prior to the 2023 legislative session.



- e. TCPA members undertook weatherization and other projects to ensure reliability through the installation of additional heat tracers and insulation, fuel storage enhancements, pipeline supplier diversification, investment in additional fuel storage capacity, and personnel training regarding lessons learned. Members continue to work on issues of gas transparency, market design, and other areas in the regulatory arena, to align the market with the reliability Texans expect.
- f. The PUCT and ERCOT have taken administrative actions to ensure grid stability, including:
  - i. In October 2021, the PUCT adopted Phase One of the weather emergency preparedness plan, which requires generators to implement weather readiness recommendations. ERCOT conducted inspections of plants during December and reported that 99% of resources were 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 last quarter and others beginning the interconnection and siting process for additional dispatchable investment in ERCOT, should market design indicate the need for new dispatchable resources.
- 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.

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

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