



LEGISLATIVE & REGULATORY UPDATE

Volume 11 – May 13, 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 Raises Concerns with PUCT Regarding ERCOT Proposal to Manage Planned Outages, Requests Clarifications to Process for Appeals of ERCOT Board Actions**

This week, TCPA filed a letter with the PUCT expressing reservations about ERCOT's recent adoption of Nodal Protocol Revision Request (NPRR) 1108, which limits the ability of dispatchable generation to take planned outages to conduct maintenance. The ERCOT Board overrode a unanimous vote of their own Technical Advisory Committee (TAC), adopting a version of NPRR 1108 that removed several important components to the TAC consensus. TCPA requested that the PUCT reject the ERCOT Board action, in consideration of the real impacts that approval of the Board-approved version of NPRR 1108 could have on the long-term viability of the dispatchable fleet.

In doing so, TCPA also requested that the PUCT initiate a process to clarify the process by which stakeholders can appeal ERCOT Board decisions to the Commission. SB 2 requires the PUCT to approve any ERCOT-adopted rules before they can take effect, while the pre-existing PUCT procedural rules provide that ERCOT actions may be appealed to the PUCT. The ability to appeal ERCOT actions to the PUCT is a critical check and balance for ERCOT governance, so providing clarity in that process is valuable to all stakeholders.

NPRR 1108 is related to SB 3 provisions for ERCOT to "review, coordinate, approve, or deny" planned outages of electric generation units. While ERCOT already substantively had those capabilities, ERCOT proposed several modifications to its methodology for evaluating outage



requests. A concern amongst stakeholders is that ERCOT's version of NRR 1108 would strictly limit generators' ability to schedule their outages based on "top-down" criteria wholly outside of their control (like the unpredictability of wind, solar, and load forecasts). Generators already must schedule planned outages during non-peak weather seasons to be ready for the high demand summer and winter seasons, and are already subject to having outages moved by ERCOT if reliability conditions warrant (in addition to the economic incentives to move outages that the market can provide).

TCPA filed multiple comments on this proposal as part of a broad stakeholder coalition, arguing the proposed methodology for limiting thermal generator outages does not account for ERCOT's conservative system operations (including the unprecedented use of Reliability Unit Commitment (RUC)), resulting in added wear and tear to generation units. Generator maintenance schedules are use-driven, just like a car's maintenance schedule, so this activity exacerbates generators' operational maintenance needs. Increased outage restrictions and an even more 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.

Since the methodology does not account for required maintenance to maintain warranties, in the extreme, units could be forced offline to avoid breach of warranty and to maintain compliance with safety protocols. Moreover, the NRR does not ensure those generators assisting reliability will be able to take their outages. 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.

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

Yesterday, the PUCT approved the version of NRR adopted by the ERCOT Board but directed ERCOT staff to work with generators to address the issues outlined. However, this issue further underscores the need for more installed dispatchable generation in ERCOT. To achieve this, the PUCT must implement Phase II market design that will properly value the reliability provided by dispatchable generators and would provide a stable and consistent revenue stream for that type of needed generation. Without these market design decisions, the volatility of the current generation makeup and lack of stable revenue stream, coupled with conservative operations squeezing the thermal fleet, will continue to make it uneconomic to own dispatchable generation in ERCOT.



II. TCPA Files Joint Comments with ERCOT on NPRR 1085, Ensuring Accurate Information Following a Generation Facility's Loss of Operational Capacity

TCPA member companies joined several other power generators from across different market segments to express concerns about new ERCOT reporting requirements on generators following an event that causes a plant to shut down or reduce output. While ERCOT needs to be kept up to date when an event that affects a generator's capability to provide power to the grid occurs, TCPA and the other Joint Commenters are seeking to balance that need with operational reality. The first several minutes following an event are focused on the safety of employees and the resource, as well as diagnosing cause of the failure, which in turn results in better information to ERCOT.

ERCOT's proposal to require an update within 10 minutes of an event could force generators to choose between focusing on safety of employees, contractors, and plant equipment or violating an ERCOT Protocol. TCPA and the other Joint Commenters proposed 15 minutes to provide needed updates to ERCOT following an event and 60 minutes to update current operating plans if the plant will be curtailed for longer than that time. This allows ERCOT to receive timely updates (an improvement from ERCOT's perspective vs. the current "as soon as practicable" requirement), and ensures generators are not sacrificing safety for fear of enforcement of an infeasible Protocol requirement.

The Joint Commenters' filing can be read [HERE](#).

III. TCPA Files PUCT Comments on PUC Project No. 52796 Regarding Market Participation

On April 1, PUCT Staff filed a Discussion Draft rule proposal regarding electric market participant qualifications and reporting requirements. TCPA filed comments on the Discussion Draft on April 29th.

TCPA appreciates that the PUCT rules should allow for – and in some cases require – an entity to register prior to engaging in an activity over which the PUCT has jurisdiction (such as generating, buying, and/or selling electricity at wholesale). In several instances in the filing, TCPA generally suggests that the Commission utilize verbiage that provides for a clearer "bright line" test, to reduce the risk of being challenged by an entity seeking to evade PUCT jurisdiction through assertions of subjective intent.

TCPA has concerns that the Discussion Draft rule's proposal to require power generators and power marketers to annually renew their registrations might create additional administrative burdens for both the PUCT and market participants. TCPA understands that the intent of the proposal is to ensure that the PUCT has current contact information for registered entities, but



that is already required under the rule and may be able to be addressed more efficiently than requiring annual renewals for all entities.

The Discussion Draft rule would also remove the option of suspending a registration, as well as the requirement to show “a pattern of failure” to meet the legal and regulatory requirements. State statute specifically gives the PUCT the authority to “suspend or revoke a power generation company's registration for significant violations...” and TCPA recommends the PUCT reflect that standard in its rule.

You can read the TPCA comments [HERE](#) and the PUCT’s Discussion Draft rule [HERE](#).

IV. **Houston Chronicle: Are Pipeline Companies Too Powerful?**

On May 4th, the *Houston Chronicle* published an article discussing the intrastate pipeline market in Texas. The article suggested that the “complex, opaque and lightly regulated” market allows pipelines to “exercise vast market - sometimes monopoly - power to demand whatever prices they want in times of gas shortage, resulting in soaring costs for customers and profits for the companies.” The Texas Railroad Commission has indicated limited authority to be involved in gas pricing or contracts between customers.

Many of the concerns highlighted in the article have been raised by TCPA in filings with Texas policymakers. TCPA remains concerned that lack of transparency on the intrastate gas system makes it difficult for market participants, as well as regulators, to assess whether rates are reasonable, whether affiliated shippers are given priority over other buyers for rates and access to pipelines, and to collect the data required to file a successful complaint, the only avenue available to buyers to remedy inequities in the intrastate market. Lawmakers may want to consider creating additional tools to help rectify market manipulations, including the ability to remedy a past rate and assess damages against a violator. Similarly, lawmakers may want to require that intrastate pipelines provide the same access to information about flows, capacities, outages, and curtailments that are provided on the interstate pipeline system, in which many of these same operators also participate.

You can read the full article [HERE](#).

V. **CBS Austin: Generators/Providers Prepping for Summer, but Face Regulatory Hurdles**

On Tuesday, TCPA was featured in a *CBS Austin* story regarding summer power preparations. Executive Director Michele Richmond discussed the challenges of needing to have a dual focus



on peak electricity demand in both summer and winter, and how planned maintenance may be sidelined to ensure reliability at both ends of Texas' weather extremes.

ERCOT's conservative approach to reliability and increased use of RUC is impacting the state's dispatchable electric generation fleet's efforts to prepare for the coming summer heat. Michele commented that "you may see some generators taking their planned outages into June as opposed to having them finished before summer really gets into season."

For planning purposes, "it would be helpful to have what we call guardrails or floors that provide throughout the entire year a minimum number of outages that are allowed so that they're not clustered all in the spring and all in the fall, but can be taken throughout the year when it's appropriate and when we see forecasts that lend itself to dispatchable resources being offline," Richmond said.

CBS Austin's story can be seen [HERE](#).

VI. PUCT Provides Policy Guidance on First Firm Fuel Supply Service Procurements

The PUCT has given ERCOT the direction needed to initiate the inaugural procurement of Firm Fuel Supply Service (FFSS), a provision included within the electric market redesign efforts underway pursuant to SB 3.

The PUCT gave policy guidance following recommendations from Potomac Economics, the Independent Market Monitor (IMM) for the ERCOT wholesale market, which suggested defining FFSS "eligibility" be aligned with the state's "reliability" objectives and include any such resources that can operate continuously during natural gas curtailments of 48 or 72 hours. Compensating them in a non-discriminatory manner will maximize their availability and help address the concerns identified in SB 3.

The IMM also recommended a single clearing price for FFSS that is paid to all FFSS suppliers, consistent with other products and services procured by ERCOT, rather than a "pay-as-bid" market. The IMM expressed concern that a pay-as-bid market could produce inefficient and generally more costly outcomes. Suppliers would be incentivized to estimate the highest bid accepted in the auction and would therefore be discouraged from offering service at prices reflective of marginal costs.

The Commission followed IMM advice to expand eligibility in the next procurement to other fuel-resilient resources such as coal generators and gas generators with direct firm access to offsite



natural gas storage. They also adopted the IMM's recommendations on setting budget and bid caps for the initial procurement.

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

VII. Additional TCPA Legislative Activities

TCPA Roadshow: Next stop for the TCPA Roadshow is scheduled for **May 18th & 19th** in **Granbury, Fort Worth and Dallas**. Tours will include the Wolf Hollow II plant (owned by TexGen/Constellation) in Granbury, Mountain Creek (TexGen) in Dallas, and Handley Generating Station (TexGen/Constellation) in Fort Worth.

We anticipate concluding the Roadshow in San Antonio and South Texas during the Fall of 2022. If you or your staff are interested in joining a tour, please [contact TCPA](#) to let us know.

VIII. What to Say When Asked "Are we ready for this early heat and do I need to worry about my power going off?"

Much of the news lately is focused on the number of generators that are offline for maintenance and concerns about the tightness on the grid. Generators are currently allowed only March, April, and part of May in the spring and two months in the fall in which to conduct maintenance that requires a unit to be taken offline.

Just like a car needs an oil change, scheduled maintenance after specific mileage milestones, and other routine work to ensure it runs efficiently and at maximum performance, electric generators are complex machines that also need maintenance at certain intervals and after a certain amount of run time for them to work efficiently and at their best performance.

The work being done now is to ensure the resources we need in the heat of summer are there. Typically, wind is more plentiful in the spring than in the heat of summer, making it more likely that renewable resources will be able to meet the need for power. Because it has been difficult to run generators like gas, coal, and nuclear plants with the very low prices we have seen for over a decade, very few of these reliable resources have been built in Texas in the past decade. The plants are getting older and running harder than ever, so it's good that generators are doing the needed maintenance now, so they are ready when we really need them.



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 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. 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 NRR 1086 – Systemwide Offer Cap
 - xvi. ERCOT NRRs 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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