**PROJECT NO. 53403**

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| **REVIEW OF CHAPTER 25.101** | § | **PUBLIC UTILITY COMMISSION** |
| | § | **OF TEXAS** |

**TCPA COMMENTS ON THE PROPOSAL FOR PUBLICATION (PFP) OF AMENDMENTS TO 16 TAC §25.101**

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[1] 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 provide almost ninety percent (90%) of the non-wind electric generating capacity in ERCOT. TCPA members have invested billions of dollars in the state and employ thousands of Texans.

TCPA appreciates the opportunity to provide comment on the Proposal for Publication (PfP) of amendments to 16 TAC §25.101. The subsequent comments will be focused on the consumer benefit analysis for approving economic transmission lines as well as the costs that should be included or disallowed in subsequent rate cases and transmission cost recovery cases.

[1] TCPA member companies participating in these comments include: Calpine, Cogentrix, Constellation (formerly Exelon), EDF Trading North America, Luminant, NRG, Shell Energy North America, Talen Energy, Tenaska, TexGen Power, and WattBridge.

## GENERAL COMMENTS

TCPA agrees with concerns expressed by Commissioners at the August 25, 2022 open meeting about being able to meaningfully evaluate some of the more expansive concepts included in the PfP under the timeline of a legislation implementation rulemaking. As Commissioners suggested there will be a forthcoming "Phase 2" rulemaking on these topics, TCPA believes that the Commission will be able to develop a more fulsome record focused specifically on those concepts when not as constrained for time.

First, PURA § 37.056(d) only requires the Commission to institute a congestion cost savings test, and does not require the Commission to evaluate "other direct and indirect costs and benefits." TCPA encourages the Commission to focus this rulemaking on implementing the specific directive of PURA § 37.056(d) and defer consideration of other, less clearly-defined, criteria to a future rulemaking. As the Commissioners' discussion and ERCOT's feedback at that meeting highlighted, the evaluation of modeled known costs and benefits (e.g., production cost and congestion cost savings) is difficult enough over a projected timeframe. Given that the phrase "other direct costs and benefits" is potentially very expansive and could include new modeling not fully vetted (or open to reply comments in this rulemaking), and given the long-lasting nature of transmission investments, including the sustained impact that they can have both on consumers' bills and on the reliability of the grid, TCPA recommends that the Commission not include that broad language in the adopted rule at this time. In addition, regardless of whether the Commission decides to retain that language, TCPA offers some additional suggestions on this subsection in Section I below. Either way, TCPA recommends striking that language from proposed 16 TAC § 25.101(b)(3)(A)(i):

(i) Except as stated below, the following must be met for a transmission line in the ERCOT power region. The applicant must present an economic cost-benefit study. ~~In addition to the following requirements, other direct and indirect costs and benefits to the transmission system attributable to the project may be included in the cost-benefit study.~~ The study must include:

Second, and similarly, TCPA shares the sentiments expressed by Commissioners at the August 25, 2022 open meeting that the "resiliency" criteria proposed in the PfP would benefit from additional development. As Commissioner Cobos noted, the Commission has relied upon resiliency criteria already through its directed action in the Rio Grande Valley, so is not constrained by the lack of such a provision in the rule as it stands now. TCPA also appreciates the concerns raised by Commissioner McAdams that a loosely defined resiliency concept in rule could yield unintended consequences. TCPA therefore supports deferring evaluation of the resiliency concept to a future rulemaking "phase" as striking a better policy balance. That said, TCPA does not oppose including resiliency in the biennial reliability assessment required by PURA § 39.159 at this time, as doing so may allow for further development of the resiliency concept without committing it to rule language. Therefore, TCPA recommends striking proposed 16 TAC § 25.101(b)(3)(A)(v) in the final rule in this project:

~~(v) The commission may approve a transmission line that does not otherwise demonstrate sufficient economic savings under clauses (i) and (ii) of this subparagraph or reliability benefits under clauses (iii) or (iv) of this subparagraph if the line would address a resiliency issue identified by ERCOT in the grid reliability and resiliency assessment required by subparagraph (E) of this paragraph. In determining whether to approve a such a line the commission will consider:~~

~~(I) the extent to which the transmission line failed to demonstrate sufficient economic or reliability benefits to merit approval on those grounds;~~

~~(II) the extent to which the transmission line would address the resiliency issue identified by ERCOT by reducing the impacts of potential load shed caused by regional extreme weather scenarios on customers,~~

~~(III) the cost effectiveness of the transmission line's ability to address the resiliency issue identified by ERCOT compared to other possible solutions, transmission or otherwise; and,~~

~~(IV) other factors listed in PURA §37.056(c), as appropriate.~~

## I. CONSIDER RESOURCE ADEQUACY IN THE CONSUMER BENEFIT TEST

TCPA recommends that the Commission specify the inclusion of resource adequacy impacts in the consumer benefits test, particularly if the Commission decides to retain the broader "other direct costs and benefits" language in the adopted rule. Because transmission costs are socialized to consumers through regulated rates, it is critical to ensure that the cost of paying for each new transmission line is holistically beneficial to consumers from both a transmission cost and resource adequacy perspective. Therefore, TCPA recommends the analysis of costs and benefits include a component that evaluates the resource adequacy impact of the transmission line. Among the considerations should be whether the resources expected to reduce congestion enhance overall system resource adequacy, increase or decrease volatility on the system, hasten the retirement or prolong the life of dispatchable resources on which ERCOT relies to meet peak net load, and the net capacity factor of the resources for which the transmission line is being constructed.

In a past case when evaluating capital projects subject to rate recovery that were claimed to present an economic benefit for customers, the Commission carefully analyzed whether such benefits would likely be delivered prior to approving a settlement authorizing construction of the project. Specifically, in Docket No. 46936, the Commission required additional information regarding a utility's economic modeling, including base case and sensitivity cases, prior to approving an unopposed stipulation, which included several ratepayer protections, including a minimum production guarantee and capital cost caps. While that case was specific to a regulated non-ERCOT entity, the concerns regarding reliability benefit derived from regulated costs should apply to ERCOT in the analysis of consumer benefits.[2] While ERCOT and transmission providers cannot guarantee the production of a resource, ERCOT has extensive experience in evaluating the capacity provided to the grid by every type of generation resource and is capable of providing data regarding the resource's expected capacity at different demand intervals as well as the likely impact to reliability. Such analyses are conducted for the Capacity, Demand and Reserves (CDR) report, Seasonal Assessment of Resource Adequacy (SARA), and marginal Effective Load Carrying Capability analysis, for example. Similar evaluations should be conducted to ensure transmission costs are focused on enhancing overall reliability.

Just as avoided fuel costs in Docket No. 46936 do not capture the whole of consumer impacts from additional costs of a certificate of convenience and necessity, avoided congestion costs do not reflect the full picture for consumers ordered to pay for new transmission lines. Resource interconnection considerations, such as whether congestion will result from poor siting decisions and whether resource adequacy is ultimately enhanced or diminished, are also paramount. A resource that increases volatility on the system while accelerating the retirement of dispatchable resources relied upon to meet net peak load may not be a wise use of captive ratepayers' money. In contrast, a resource that enhances reliability while reducing congestion costs may be a responsible investment for ratepayers to make. If only one aspect of the equation is evaluated, consumers and reliability may be the losers in the deal.

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[2] *Application of Southwestern Public Service Company for Approval of Transactions with ESI Energy, LLC and Invenergy Wind Development North America LLC, to Amend a Certificate of Convenience and Necessity for Wind Generation Projects and Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico, and for Related Approvals*, Docket No. 46936, Unopposed Stipulation (Feb. 27, 2018), *available at*: 46936_411_971094.PDF (texas.gov)

Congestion cost analysis should also include Congestion Revenue Right Auction Revenue Distributions (CARD) rebated to load since this refund offsets congestion costs for consumers. Accounting for this rebate is essential for a proper cost benefit analysis of congestion costs borne by consumers.

Accordingly, and particularly if the "other direct and indirect costs and benefits" language is retained (though also if it is stricken at this time, as is TCPA's primary recommendation), TCPA recommends the following modifications to the PfA's proposed 16 TAC § 25.101(b)(3)(A):

(A) **Determination of need**:

(i) Except as stated below, the following must be met for a transmission line in the ERCOT power region. The applicant must present an economic cost-benefit study. In addition to the following requirements, other direct and indirect costs and benefits to the transmission system attributable to the project may be included in the cost-benefit study. The study must include:

(I) an analysis of whether the estimated levelized annual congestion cost savings for consumers, calculated on a system-wide basis and taking into account the effect of any potential unit retirements resulting from the project, are equal to or greater than the first-year revenue requirement of the proposed project of which the transmission line is a part. ERCOT, in consultation with commission staff, must develop a congestion cost savings test including Congestion Revenue Right Auction Revenue Distributions to consumers. ~~to implement subclause (I) of this clause, and~~

~~(-b-) prior to the effective date of the test developed by ERCOT under item (-a-) of this subclause, ERCOT may utilize the generator revenue reduction test, effective Dec. 1, 2011 under the ERCOT Nodal Protocols §3.11.2(6) to calculate the estimated congestion cost savings for consumers as required by subclause (I) of this clause; ERCOT may continue to rely upon calculations developed from the generator revenue reduction test to evaluate ongoing applications after the effective date of the test under item (-a-) of this subclause, and~~

(II) an analysis of whether the levelized ERCOT-wide annual production cost savings attributable to the proposed project are equal to or greater than the first-year annual revenue requirement of the proposed project of which the transmission line is a part; and

(III) an analysis of the impact of the proposed project on resource adequacy.

## II. CAPITAL COST CAPS

Regardless of whether or not the Commission decides to retain the broader "other direct costs and benefits" language in the adopted rule, TCPA recommends that in adopting the final rule, the Commission include a threshold over which a utility is ineligible to recover costs to ensure cost estimates provided to ERCOT and the Commission for economic evaluation are accurate.

The different cost tiers for transmission have different levels of review and stakeholder input at ERCOT. Based on past cost overruns, it is a real concern that proposed transmission lines will be divided into multiple segments to reduce the cost of each request, and/or will have the cost estimate grossly understated in order to meet a lower threshold of review.[3] In addition to the Competitive Renewable Energy Zones (CREZ) that cost more than the $7 billion reported, when consideration is given to the tangential transmission lines resulting from CREZ, individual economic projects such as the WETT Bearkat line and substation were approved based on an estimate significantly below the Final Estimated Project Cost.[4]

While it is understood that costs may not all be entirely known when approval is needed for a project, it is essential that ratepayers and customers not be exposed to costs exceeding the amount at which the Commission would have no longer approved of the project had the Commission known that true cost during the approval process. Accordingly, the Commission should include an amount over which cost over-runs relative to the project cost estimate used for

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[3] $7 Billion CREZ Project Nears Finish, Aiding Wind Power | The Texas Tribune (Oct. 14, 2013).

[4] *CY 2022 Electric Utility Transmission Construction Reports under 16 TAC § 25.83*, Project No. 52947, Wind Energy Transmission LLC's August 2022 Monthly Construction Report (Aug. 12, 2022), *available at*: 52947_222_1230103.PDF (texas.gov): WETT's initial estimate was $29 million for transmission and $3.5 million for the substation. The construction progress report for this economic line is now at $51 million for the transmission line and $8.8 million for the substation, nearly double the estimate that approval was based upon.

justification of a transmission project on economic criteria are not eligible for recovery and rate of return from the ratepayers, and are clearly disallowed in rates. Again referring to Docket 46936, the approved stipulation included a capital cost cap of 102.5% of the dollar estimate presented by the company in its application for approval. While 2.5% could be considered overly restrictive, it is prudent and in the interest of transparency and ensuring approved lines remain economic to include in the rule a cost cap over which utilities will be ineligible for recovery. Given that utilities typically already include a certain level of contingency costs in their cost estimates, a reasonable cost cap could be 105%, which would account for unforeseen circumstances but reduce the incentive to underestimate costs to game the economic criteria or to reduce the level of review.

Consistent with the above, TCPA recommends that subsection (b)(3)(ii) of the PFP be revised as follows (which includes a modification consistent with TCPA's recommendation in Section I of these comments):

> (ii) Except as stated below, a transmission line in the ERCOT region must demonstrate savings under clause ~~(i)(I) or (i)(II)~~ (i) of this subparagraph. For a transmission line approved under clause (i), the electric utility must only be permitted to recover, in a future rate proceeding, the level of capital costs that were used in the analysis under which the transmission line was found to meet the necessary level of savings for approval. However, upon a showing of good cause, an electric utility may be permitted to recover up to 105% of such capital costs.

## III. CONCLUSION

TCPA appreciates the opportunity to provide comments on this important proposal. Regarding the timing of adopting potential changes to 16 Texas Administrative Code § 25.101, TCPA recommends adopting Phase II market design before finalizing adoption of the rule on economic transmission projects to ensure adopted changes fit within the Commission's goals for market design and do not undermine the changes made to attract and retain much-needed dispatchable generation resources for reliability.

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Respectfully submitted,

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EXECUTIVE SUMMARY OF TCPA COMMENTS

- TCPA shares the belief that the Commission will be able to develop a more fulsome record on the expansive concepts of defining resiliency criteria and considering "other direct and indirect costs and benefits" under a "Phase 2" rulemaking, as discussed by commissioners at the August 25, 2022 Open Meeting.
- TCPA therefore recommends that the Commission not include the broad language "other direct costs and benefits" from proposed 16 TAC § 25.101(b)(3)(A)(i) in the adopted rule at this time since it is potentially very expansive and could include new modeling not fully vetted (or open to reply comments in this rulemaking), and given the long-lasting nature of transmission investments, including the sustained impact that they can have both on consumers' bills and on the reliability of the grid.
- Similarly, TCPA recommends that the Commission not include proposed 16 TAC § 25.101(b)(3)(A)(v) in the adopted rule at this time. TCPA does not oppose including resiliency in the biennial reliability assessment required by PURA § 39.159 at this time, as doing so may allow for further development of the resiliency concept without committing it to rule language.
- TCPA recommends that the Commission specify the inclusion of resource adequacy impacts in the consumer benefits test. Among the considerations should be whether the resources expected to reduce congestion enhance overall system resource adequacy, increase or decrease volatility on the system, hasten the retirement or prolong the life of dispatchable resources on which ERCOT relies to meet peak net load, and the net capacity factor of the resources for which the transmission line is being constructed.
- Avoided congestion costs do not reflect the full picture for consumers ordered to pay for new transmission lines. A resource that increases volatility on the system while accelerating the retirement of dispatchable resources relied upon to meet net peak load may not be a wise use of captive ratepayers' money.
- Congestion cost analysis should also include Congestion Revenue Right Auction Revenue Distributions (CARD) rebated to load since this refund offsets congestion costs for consumers.
- TCPA recommends that the Commission include a threshold over which a utility is ineligible to recover costs to ensure cost estimates provided to ERCOT and the Commission for economic evaluation are accurate.
- It is essential that ratepayers and customers not be exposed to costs exceeding the amount at which the Commission would have no longer approved of the project had the Commission known that true cost during the approval process. Accordingly, the Commission should include an amount over which cost over-runs relative to the project cost estimate used for justification of a transmission project on economic criteria are not eligible for recovery and rate of return from the ratepayers and are clearly disallowed in rates. TCPA proposes that costs exceeding 105% of the estimates be disallowed.