



LEGISLATIVE & REGULATORY UPDATE

Volume 14 – September 28, 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 comprise 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. ERCOT Names New CEO

ERCOT named Pablo Vegas to serve as president and CEO of the state's grid operator, to begin on October 1. Brad Jones will continue to serve as interim CEO until then. Mr. Vegas presently services as Executive VP of NiSource and Group President of NiSource Utilities. Previously, he worked as President and CEO for AEP Texas.

II. New PUCT Commissioner

On August 5th, Gov. Greg Abbott appointed Kathleen Jackson to the Public Utility Commission of Texas. A registered Professional Engineer, Comm. Jackson has been a member of the Texas Water Development Board since 2014. The PUCT now has its full complement of members for the first time since Winter Storm Uri.

III. State Affairs/Energy Resources Joint Meeting

On September 13th, the House State Affairs and Energy Resources Committees held a joint hearing to discuss a range of issues related to the electric and natural gas markets in Texas. PUCT Chairman Peter Lake testified that ERCOT set records for demand for electricity this summer, but



that there were good results from the grid. The reforms are working. Weatherization efforts are continuing to be implemented.

Regarding the Market Redesign Study required by S.B. 3, Chairman Lake said they sent information back to consultants and a final market product should be available this fall. They will present the final document to ERCOT and the Legislature and subsequently there would be formal adoption by the PUC.

RRC Commissioner Christi Craddick discussed the implementation of the electricity supply chain map that the RRC is going to update twice a year. She said she sees nothing today that needs to be dealt with legislatively.

In discussing how to ensure gas producers make gas available in times of weather crisis, Comm. Craddick said that the gas industry is a free market and the RRC cannot force someone to produce, but that if a producer believes they can make money, they would likely weatherize to stay online. When asked about transparency on the gas pipeline system, Comm. Craddick said interstate is regulated, but the intrastate is a free market.

The committees extensively discussed the possibility of the creation of a “gas desk” at ERCOT and what that would entail. ERCOT Interim CEO Brad Jones described how there are desks on the ERCOT floor, each manned by an operator 24 hours a day. One desk monitors the availability of renewable resources, and the other seven desks have similar monitoring and reporting responsibilities for a different area of the overall electric grid. He indicated that ERCOT would like one desk to gather information on the natural gas system and envisioned a voluntary process whereby gas companies share operational information which would be kept confidential at ERCOT. Several lawmakers expressed concerns about this concept, indicating that the gas industry would likely oppose such a plan, and that many producers worry that the information could be burdensome to collect and report, and would not remain confidential. Jones said he is hopeful the gas companies will see that it is about improving reliability for Texas.

TCPA provided two witnesses for the hearing. Paul Sierer, a TCPA consultant with decades of operational experience in gas contracts, testified that whatever happens in the Texas gas market is inextricably linked with electric supply costs, and ultimately electric consumer bills. Reliable gas supply is critical to Texas consumers, and a transparent market is essential to achieving that. He suggested that buyers of intrastate pipeline transportation services are at a disadvantage, and that Texas consumers of gas and electricity are paying the price. The RRC relies almost solely on market forces between pipelines to keep prices in check, but a lack of competition lets intrastate



pipeline companies' affiliated marketing arms effectively charge whatever they want. The Texas intrastate contracting model does not truly represent willing buyers and sellers.

Sierer said the legislature needs to require intrastate pipelines to create a capacity release program, which would allow generators and other gas users to sell contracted but unused firm gas supply and transportation capacity on an open market. Presently, unused gas can often only be sold to the pipeline affiliate gas supplier, and for pennies on the dollar. Similarly, underutilized firm transportation rights cannot be "sublet" to other gas shippers – a disincentive to contracting firm transportation. He also believes that the legislature needs to require intrastate pipelines to separate their marketing and transmission functions, like how electric wires & poles companies in Texas are prohibited from owning generation and retail companies, because there is no way to determine if an affiliate is given a pricing advantage.

Michele Richmond, TCPA Executive Director, discussed the need for stability in the electric market design. She said investors won't put their money into the market until they know what the rules are. She said TCPA believes that the reliability that ERCOT wants should be achieved through the competitive market, not through top-down regulation.

As an example, some of the generator units presently online are 40-70 years old, and probably would be candidates for retirement, but are being pushed harder than ever in order to ensure grid reliability. Requiring these units to stay online through "reliability must run" designation is exponentially more expensive to consumers and sends a chilling message to investors that they may be forced to run even when not economical. According to Richmond, there is no revenue stability in this market, in part because reliability requirements are not being achieved through the competitive market. Companies have tried to build gas plants for 5-7 years and can't get financing. Richmond said that the legislature gave the PUCT all the authority needed to develop and implement market design in SB 3, and if the state wants investors and lenders to finance construction of new power plants, the state should let the PUCT do the work that they were tasked with after Winter Storm Uri. Additionally, if market design is delayed pending legislative action in 2023, the tight conditions experienced this year will not only continue into 2023 and 2024 but will likely be exacerbated into 2025, 2026 and 2027 because it takes 2-3 years to bring a new combined cycle gas plant into service once the decision to invest is made. A final Phase II market design is necessary to provide the regulatory certainty investors need to put capital in the market.

In response to questions about firm fuel for generators, Richmond indicated that TCPA does not disagree that firm fuel with firm transportation and storage are ideal. However, in parts of the state where intrastate pipelines have geographic monopolies, some generators are unable to get



firm contracts from their supplier and have no alternatives. Additionally, generators are compensated only for the fuel they burn when producing power and do not know in advance if they will be dispatched by ERCOT, and at what level of production. Since generators on intrastate pipelines incur significant penalties both for failing to use all contracted gas as well as for needing more gas than contracted for and are unable to sell gas back at market rate through capacity release, it is economically unfeasible to contract for firm fuel, transport and storage for all plants all the time.

TCPA's witness testimony can be found [HERE](#). Sierer's remarks begin at the 3:09 minute mark, and Richmond's comments begin at the 4:29 minute mark,

IV. Gas Weatherization Rules

On August 15th, TCPA filed comments with the RRC on the proposed Weatherization Emergency Preparedness Standards for the natural gas industry, 16 TAC 3.66. The comments included a request to provide greater clarity about operators that are included in the electric grid supply chain, as mapped by the RRC, and which among them plan to operate during winter periods and would therefore need to weatherize to the RRC outlined standards.

TCPA comments also suggested assurances that gas operators account for both known and reasonably anticipated weather-related forced stoppages. Finally, TCPA suggested that the proposed penalty structure would make it nearly impossible for operators to reach the Class A penalty violation plateau, meaning that penalties for all but the most egregious violations would likely be at most \$5,000. TCPA believes that to have the desired effect, penalties should serve as an incentive to avoid violations, not as a minor inconvenience or "the price of doing business."

On August 30th, RRC adopted the final rule. While some TCPA comments were adopted in the final rule, the three chief concerns outlined above were not. In addition, the final rule makes it clear that the RRC does not believe it has authority to *require* operations in a weather emergency, and that the weatherization rules only apply to gas facilities that are *both* designated as critical *and* on the Electric Supply Chain Map required by SB 3. On the same day, the RRC also issued proposed changes to 16 TAC 3.65, which was first adopted in late 2021 to establish critical natural gas facility designation criteria. Those proposed changes would materially raise the threshold for designation of natural gas facilities as critical, as well as narrow the definition of what constitutes a "weather emergency." If those changes are adopted, it will further reduce the scope and effect of weatherization requirements for the gas industry.



TCPA's August 15th comments may be read [HERE](#). The RRC Staff Recommendations can be found [HERE](#).

V. State Energy Plan Released

On September 1st, the State Energy Plan Advisory Committee (SEPAC) created by SB 3, released its report to the 87th Legislature. SEPAC was directed to evaluate barriers to the electricity and natural gas markets that prevent sound economic decisions, and evaluate methods to improve the reliability, stability and affordability of electric service in Texas, as well as evaluate the electricity market structure and pricing mechanisms and suggest improvements to the wholesale electric market.

Among the key recommendations:

- The RRC should expeditiously continue to finalize its weatherization rules to ensure that all the critical gas infrastructure included on the Electricity Supply Chain Map in the state is subject to mandatory weatherization and inspection requirements.
- The PUC should undertake the planned expansion of its firm fuel supply service to include additional resources with proven firm fuel capabilities.
- The key reliability issue facing ERCOT will be to ensure adequate dispatchable generation is available during times of low non-dispatchable output.
- The PUC should define a clear reliability metric or standard for the ERCOT region.
- The PUC and ERCOT should continue studying the system's operational needs as the new ERCOT contingency reserve ancillary service is developed and becomes operational.
- As part of a long-term reliability solution, a shift in the market construct is needed to address the current challenges in maintaining reliability. While there is a diversity of views on the specific parameters of the solution, the committee found broad support for favoring competitive solutions to manage the uncertainty that ERCOT presently is addressing through out-of-market reliability actions.
- In order to provide regulatory certainty to the market, the PUC should expeditiously complete its Phase II market design review and bring forward an analysis of the proposed costs and benefits of the proposals under consideration. This review also should identify how each proposal comprehensively addresses the reliability standard, and the disconnect that exists today due to ERCOT's conservative, out-of-market actions.
- Require intermittent generation sources to firm their deliveries with other dispatchable generation technologies.



- The committee did not support a market design that favors new or subsidized generation over existing resources, as doing so could create regulatory inefficiencies and raise capital costs for Texas ratepayers.

Many of these findings align with TCPA's own suggestions to lawmakers and regulators about how to best achieve an improved electric grid in the most economical fashion. A one-pager on achieving reliability through competitive markets can be accessed [HERE](#). The SEPAC report can be viewed [HERE](#).

VI. TPCA Presents at Energy Council

TCPA joined other industry representatives in San Antonio for Energy Council, a nonpartisan legislative organization comprised of 14 energy-producing states in the United States and two Canadian provinces.

At the conference, TCPA reiterated to lawmakers that regulatory certainty is necessary for new investment in ERCOT, and that there are companies that want to invest in this market but need the assurances that market conditions would support such investments. TCPA member company Calpine hosted a tour of the Guadalupe Energy Center in New Braunfels to discuss plans to expand the facility by 400 MW, making it the largest gas plant in Texas, but indicated that its investment decision will be informed by how the adopted Phase II market design values reliability and dispatchable resources. Their plans for new steel in the ground would add reliable, dispatchable generation in ERCOT, but doing so is not economic under the current market structure and ERCOT's current grid management practices.

TCPA also discussed that while economic incentive programs such as 313 can be immensely valuable, they are not a substitute for much-needed market reform under Phase II, because incentives do not pay back loans or generate the ongoing revenue required by investors to cover plant operations and maintenance (O&M) as well as capital investment.



Energy Council attendees tour Calpine's Guadalupe Energy Center.

VII. Economic Transmission Consumer Benefits Test – PUCT Project 53403

TCPA filed comments on September 22nd in PUCT Project 53403 to implement the changes made by SB 1281, to require a consumer benefit analysis of transmission projects. The proposal filed is more expansive than the legislation, and TCPA recommends limiting the current rule adoption to the implementation of the legislation, deferring the expansive changes to a later phase so that proper vetting and analysis may be conducted.

A summary of TCPA's comments include:

- A recommendation that the Commission not include the broad language "other direct costs and benefits" 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). Given the long-lasting nature of transmission investments, a cost analysis should include a project's sustained impact on both consumers' bills and on the reliability of the grid.
- A recommendation that the Commission include resource adequacy impacts in the consumer benefits test – such as whether the resources are expected to reduce congestion, enhance overall system generation adequacy, increase or decrease volatility on the system, hasten the retirement or prolong the life of dispatchable resources on which ERCOT relies, and an indication of how much power consumers can actually expect from the resources for which the transmission line is being constructed.
- An observation that "avoided congestion costs" do not reflect the full picture for consumers who are ordered to pay for new transmission lines. A resource that increases volatility on the system while accelerating the retirement of needed dispatchable resources may not be a wise use of captive ratepayers' money.



- It is essential that ratepayers and customers are not exposed to costs exceeding the amount at which the Commission would likely not have 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.

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

VIII. ERCOT Bylaws Change Proposed Will Disenfranchise Market Participants

ERCOT has proposed a change to its bylaws that has garnered unified concern and opposition from across all segments of the electric industry, including consumers. The proposed change would enable the Board of Directors to make changes to the bylaws without a vote of the corporate members of ERCOT, which would reduce or even eliminate stakeholder participation, a process that has ensured consensus-building and thorough vetting of changes to the market functions and reliability measures.

With the completely independent, unaffiliated board required by SB 2, such a change would limit the reach of stakeholder expertise from being considered in ERCOT decision-making and concentrate input to the Board with ERCOT staff and executives. Corporate members pay a membership fee to ERCOT, which helps fund the entity, in addition to the system administration fee. Removal of corporate member involvement in governance could disincentivize continued membership, meaning those costs would be passed on to consumers through the system administration fee. Furthermore, removing the incentive for stakeholders to compromise on the details of market policy implementation means less ability for investors in the Texas grid to manage regulatory risk.

Comments are due by September 30th, with the item expected to be taken up by the Board in October. All segments of the industry will be filing comments expected to outline the detrimental policy consequences as well as legal and other concerns with the proposal.

ERCOT has indicated the change is a result of SB 2. However, that legislation changed the composition of the Board and the PUC, but made no changes to the stakeholder process.



IX. TCPA Roadshow:

We anticipate concluding the TCPA Roadshow in Coastal/South Texas during the Week of October 24th, 2022. Additional details are being finalized and will be made available soon. If you or your staff are interested in joining a tour, please [contact TCPA](#) to let us know.

X. 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:

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.

- a. 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
- b. The PUCT, ERCOT & the RRC have been undertaking rulemakings since June 2021 to implement all of the changes and directives passed last session. Collectively, these activities number well over 50 and encompass market design changes in multiple phases, weatherization rules in multiple phases, weather studies to guide weatherization, mapping the supply chain between natural gas facilities and electric generating resources, creating a power outage alert system, creating new electric products for fuel resiliency, and many others that will be ongoing for the next couple of years.
- c. 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 announced a new 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 was just released for consideration during the 2023 legislative session.
- d. 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.
- e. 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 is expected to be adopted on September 29 and is more comprehensive. However, the proposal for adoption retains a confusing dual standard for weatherization and failed to include a good cause exception, which is critical to ensure that outages canceled, moved or denied by ERCOT, supply chain issues, and contractor unavailability do not result in compliance action and penalties when those situations are wholly outside of a resource or transmission owners' control.
- f. New peaking generation construction is underway, with some TCPA member companies having broken ground at the end of 2021 and others beginning the interconnection and siting process for additional dispatchable investment in ERCOT, should market design indicate the need for new dispatchable resources. New generation is not always a new baseload power plant but may be a smaller peaking plant in the 200-300MW range, an expansion of existing plants, or incremental investment in current resources to get additional megawatts, known as "uprates", from them.
- g. Many companies are spending capital, so the goal is to design a market in ERCOT that will attract these companies to invest in dispatchable generation in ERCOT, rather than in another type of generation resource or in another part of the country. Phase II market design will hopefully provide a comprehensive solution that incentivizes investment in current infrastructure as well as provide for new investment in dispatchable generation 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.
- A one-pager on achieving reliability through competitive markets can be accessed [HERE](#).

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

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