PROJECT No. 52796

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| **REVIEW OF MARKET PARTICIPANT QUALIFICATIONS AND REPORTING REQUIREMENTS** | **§**  **§**  **§** | PUBLIC UTILITY COMMISSION  OF TEXAS |

Texas Competitive Power advocates (TCPA) INITIAL COMMENTS

IN RESPONSE TO PROPOSAL FOR PUBLICATION

1. **Introduction**

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]](#footnote-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 half (50%) of the generating capacity in ERCOT and more than eighty percent (80%) of the natural gas generating capacity in ERCOT. TCPA members have invested billions of dollars in the state and employ thousands of Texans.

TCPA file these Initial Comments in Response to the Proposal for Publication,

specifically with respect to the proposed changes to 16 Tex. Admin. Code (TAC) § 25.109. These Initial Comments are timely filed on November 14, 2022.

1. **Comments in Response to Proposal for Publication**

TCPA is concerned that the proposed definition for “self-generator” would allow persons that are, by definition, power generation companies (PGCs) under the Public Utility Regulatory Act (PURA)[[2]](#footnote-2) to avoid registration as such and thus to escape the associated regulatory requirements of PGC status. The proposed definition would allow a person to register as a “self-generator,” rather than a PGC, if the person sells a limited amount of capacity (the lesser of 10 percent of its capacity rating or 10 megawatts (MW)) into the wholesale energy or ancillary services on any given day, if the generation facility has a capacity rating that is not greater than the maximum MW consumption of co-located load (either owned by, or under common ownership with, the generator) and has the primary purpose of serving that co-located load. The proposed definition would contradict the definition of PGC in PURA, which applies to any person that generates electricity intended for sale at wholesale and, importantly, does not provide any exceptions based on the size or frequency of the sales. Thus, if adopted as proposed, the new definition would enable persons that qualify as PGCs under PURA to not register as such and would excuse them from complying with the associated requirements of operating as a PGC in Texas.

More specifically, the PFP proposes the following definition for “self-generator” in proposed § 25.109(b)(3):

(3) Self-generator -- A QF that does not sell electricity at wholesale or provides electricity only to the purchaser of the facility's thermal output, or a person that:

(A) is not a PGC;

(B) owns an electrical generating facility rated at one megawatt or more, but not more than the maximum megawatt consumption of the co-located load (using historical megawatt consumption data or expectations of megawatt consumption if the co-located load is new or an addition has been made to the existing co-located load); and whose primary purpose is to serve the co-located load, but can sell up to the lesser of 10% of its capacity rating or 10 megawatts of wholesale energy or ancillary services on any given day; and

(C) owns or is under common ownership with the co-located load.

Emphasis added. PURA § 31.002(10) defines a PGC as follows:

“Power generation company” means a person, including a person who owns or operates a distributed natural gas generation facility, that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which Subchapter E, Chapter 35, applies;

(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of “electric utility” under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

Emphasis added. In addition, PURA § 39.351(a) prohibits a person from generating electricity unless the person is registered as a PGC:

(a) A person may not generate electricity unless the person is registered with the commission as a power generation company in accordance with this section.

In other words, a person that generates electricity that is intended to be sold at wholesale is a PGC under a PURA, and a person may not generate electricity unless it registers as a PGC. There is no exception in PURA from the categorization as a PGC and the requirement to register as such if the person will only generate a portion of its capacity for sale at wholesale on any given day or if the person’s primary intent is to generate electricity only for co-located load behind the meter. By allowing a person to avoid registration as a PGC based on the person’s intent to sell only up to 10 percent of the unit’s capacity (or, if lower, 10 MW) on any given day, the rule would allow a person to violate PURA. Even if the person has a “primary purpose” of serving co-located load and even if their generation unit is sized to meet the maximum capacity of the co-located load, the person would still meet the PURA definition of PGC (i.e., which applies if a person generates electricity that is intended to be sold at wholesale) if the person sells any portion of their capacity into the wholesale market at any time. A sale of capacity into the wholesale market cannot be done accidentally, and thus, a person that makes such a sale necessarily generated electricity with the intent to do so. Thus, a person that sells any amount of their capacity into the wholesale market at any time is a PGC and should be required to register as such, regardless of whether such sales are not the person’s “primary purpose.”

Allowing a person that is a PGC to avoid registration as such is not pure semantics. The consequence of classifying a generator as a “self-generator” rather than a PGC would be that the person would not be subject to statutory requirements that apply to PGCs, such as the requirement to observe all scheduling, operating, planning, reliability, and settlement polices, rules, guidelines, and procedures established by ERCOT.[[3]](#footnote-3) A person that will participate in the wholesale electricity market – regardless of the amount or frequency of such participation – should be required to comply with all the requirements that apply to the other participants in that market, namely PGCs. It is also notable that the rule would allow the person to participate in the wholesale market on a daily basis, so long as the participation was limited to the lower of 10 percent of their capacity or 10 MW. This outcome would be contrary to PURA.

Thus, TCPA recommends that the proposed definition of “self-generator” be modified to strike the allowance for sales up to 10 percent or 10 MW and that the other proposed subsections in the rule that incorporate that allowance also be modified accordingly (i.e., proposed §§ 25.109(e)) and 25.109(f)(2)).

1. **Conclusion**

For the reasons stated herein, TCPA recommends that the changes it proposes herein to the PFP for 16 TAC § 25.109 be incorporated into the forthcoming Proposal for Adoption.

Dated: November 14, 2022

Respectfully submitted,

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Texas competitive power advocates (Tcpa) initial COMMENTS

IN RESPONSE TO proposal for publication

**Executive Summary**

* Proposed 16 Tex. Admin. Code (TAC) § 25.109(b)(3) would allow a person to register as a self-generator, rather than a power generation company (PGC), if the person “owns an electrical generating facility rated at one megawatt or more, but not more than the maximum megawatt consumption of the co-located load” if the person’s “primary purpose is to serve the co-located load” and the person makes sales into the wholesale energy or ancillary services market, on any given day, up to the lesser of 10 percent of its capacity rating or 10 megawatts (MW).
* The proposed definition would contravene the Public Utility Regulatory Act (PURA) definition of PGC in Section 31.002(10), which defines, as a PGC, a person who “generates electricity that is intended to be sold at wholesale,” as well as the requirement in PURA § 39.351 for a person to register as a PGC before generating electricity.
* A person that makes sales into the wholesale energy or ancillary services market – regardless of total amount or portion of their total capacity – necessarily intends to do so, as sales cannot be made accidentally. Thus, such a person is, by definition, a PGC under PURA and must register as such.
* Allowing a person to make sales into the wholesale market without registering as a PGC would excuse the person from compliance with the regulatory obligations of operating as a PGC, such as emergency operations plan requirements.
* Thus, TCPA recommends that the proposed definition be modified to strike the allowance for sales up to 10 percent or 10 MW (in proposed subsection (b)(3)) and to make conforming modifications to the references to that allowance in proposed subsections (e) and (f).

1. TCPA member companies participating in these comments include: Calpine, Cogentrix, Constellation (formerly Exelon), EDF Trading North America, Luminant, NRG, Rockland Capital, Shell Energy North America, Talen Energy, Tenaska, TexGen Power, and WattBridge. [↑](#footnote-ref-1)
2. Tex. Util. Code §§ 11.001-66.016. [↑](#footnote-ref-2)
3. PURA § 39.151(j) [↑](#footnote-ref-3)