LEGISLATIVE & REGULATORY UPDATE

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Texas Competitive Power Advocates (TCPA) is a trade association representing twelve 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 are comprised of approximately 50% of the total ERCOT generation fleet. TCPA members own more than 82% of the natural gas generating capacity in ERCOT.
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, Rockland Capital 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 Welcomes Rockland Capital

TCPA welcomes its newest member company! Rockland Capital is a private equity company that formed in 2003 to acquire and develop selected investment opportunities in power and energy infrastructure markets. Rockland's team has deep and focused electric power industry experience, enabling a hands-on, operational focus to managing assets. Portfolio investments have been located throughout the United States and the United Kingdom, ranging in size from 5 MW to 1,875 MW and have been fueled by natural gas, coal, biomass, oil, energy storage, wind and solar power. Rockland Capital owns approximately 1,500 MW of natural gas generation in ERCOT.

II. E3 Report Released

On Thursday, November 10th, the PUCT publicly discussed the hotly anticipated report by E3, an electric industry consulting firm, that could be expected to make the grid more reliable without further driving up electric bills. E3 analyzed several options, but the "performance credit mechanism" (PCM) proposal generated the most discussion among PUCT members.

Under the plan, Retail Electric Providers (REPs) would purchase credits from power generators to guarantee that the grid will have more than adequate electricity to cover the need when power demand is high enough to stress the grid.

Theoretically, the plan would shield consumers from facing sudden spikes in electric demand – and corresponding spikes in electric prices – because REPs and generators would structure power purchase arrangements to have enough reserve power on hand during peak periods. Both parties could face financial penalties if power supply is outstripped by demand.

E3's analysis suggested performance credits would cost nearly $500 million more per year, but regulators would expect market forces to reduce the price of credits over time. Consumers would save by avoiding electric price spikes like those seen during Winter Storm Uri in 2021, as well as other times of high demand.

TCPA's member companies are in the process of reviewing the PCM proposal and will be providing comments to the PUCT. The plan is expected to be considered for adoption by the PUCT on December 15th. You can read the full E3 report [HERE](#).

III. <u>ICF Report Misses the Mark Badly</u>

The Texas Consumer Association filed a report with the PUCT prepared by ICF Resources supporting the Backstop Reliability Service (BRS) as having the greatest reliability benefits with modest costs and suggesting that other plans under consideration by regulators would be too expensive to implement for Texas electricity users. The report attempted to lend cost figures on the Load-Serving Entity Obligation (LSEO) put forth by TCPA members NRG and Constellation (formerly Exelon).

Sadly, the spin of the ICF report focuses on only the first-year cost estimate for their assumption-heavy projection of the LSEO – despite there being no technical details about the LSEO construct released at that point, which ICF acknowledged in the body of the report - and downplays the long-term outlook that even their modeling shows would come down substantially and quickly. The report also states that the LSEO proposal will effectively create a double payment, by providing extra compensation to generators ahead of time, in addition to the existing wholesale electricity price framework. However, this additional payment is not duplicative - rather, it is crucial in spurring investment in new and existing dispatchable generation, necessary for reliability.

The result is the ICF study yields very skewed and unrealistic cost savings and reliability claims about the BRS proposal. Both the ERCOT Independent Market Monitor and Brattle (the independent consultant hired by the PUCT for last year's workshops and blueprint formation) acknowledged that an LSEO as proposed by NRG/Constellation will align the market with desired reliability outcomes, provide the investment signals to retain existing dispatchable resources, and yield new investment in those resources over the long-term. Brattle was a truly independent analysis, and it demonstrates the inaccuracy of cost estimates in the ICF report.

The ICF report shows why assumptions and details matter more than a soundbite, and policy should not be made based on soundbites. You can read the full Brattle report HERE. The full ICF report can be found HERE.

IV. TCPA Comments to Texas RRC

On October 7th, TCPA filed comments with the Texas Railroad Commission, which adopted new rule §3.65 in December 2021 to implement requirements from SB 3, in response to Winter Storm Uri, for designating certain facilities as critical gas suppliers or as critical customers during energy emergencies. The adoption of the rule was a step in the right direction to develop a more reliable natural gas and electric power system in the face of extreme weather events. TCPA's comments included a suggestion to revise the proposed definition of "energy emergency" to align with the PUCT's definition of "weather emergency."

The RRC also proposed to define "energy emergency" in such a way that an event with "potential to result in firm load shed" is triggered when the ERCOT reliability coordinator issues an Energy Emergency Alert (EEA) Level 1 or 2, instead of being triggered by conditions that present a heightened risk of "firm load shed" (which occurs at EEA Level 3). TCPA recommended that the RRC decline to make this change, and instead better align its definition with the definition of "weather emergency" recently adopted by the PUCT.

You can read TCPA's full comments HERE.

V. TCPA Comments on S.B. 1281

On September 22nd, TCPA filed comments with the PUCT on implementation of the consumer benefit test for evaluating new economic transmission projects. Because transmission costs are paid by consumers on the regulated portion of their electric bill, it is critical that evaluation of such projects include an analysis of the impact to grid reliability of the resources for which the transmission line would be constructed.

TCPA made several recommendations, but the most critical recommendations were:

- That the Commission specify that the consumer benefit test include a holistic assessment of the impact of new resources. Among the considerations should be whether the resources are expected to reduce congestion and 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 depends on for reliability, and the "net capacity factor" of the resources for which the transmission line is being constructed.
- 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 are accurate. It is essential that ratepayers and customers are not exposed to costs exceeding the amount at which the Commission would not have approved of the project, had those true costs been known during the approval process. TCPA proposed that costs exceeding 105% of the estimates be disallowed from eligibility for recovery and rate of return.

TCPA's full comments can be viewed HERE.

VI. TCPA Files PUCT Comments on Project 52796 – Review of Market Participant Qualifications and Reporting Requirements

On November 14th, TCPA filed comments with the PUCT regarding proposed changes to 16 Tex. Admin. Code (TAC) §25.109. TCPA is concerned that the proposed definition for "self-generator" would allow persons that are, by definition, power generation companies (PGCs) to avoid registration as such and thus escape the associated regulatory requirements of PGC status, such as the requirement to observe all scheduling, operating, planning, reliability, and settlement polices, rules, guidelines, and other procedures established by ERCOT. TCPA's position is that a person that sells any amount of their electric energy capacity into the wholesale market at any time is a PGC and should be required to register as such.

TCPA's full comments can be read HERE.

VII. TCPA Continues Advocacy for Gas Transparency

TCPA members continue to look for ways to improve transparency among intrastate pipelines, similar to interstate pipelines, that can help improve reliability and drive down costs for electric consumers. Power plants are often not in control of when they are dispatched by the grid operator or at what levels, so purchasing firm fuel can be challenging, particularly when generators are penalized both for purchasing too little and too much fuel. Firm fuel is not always available to electric generators, often due to a lack of purchase options.

TCPA members continue to seek consensus on ways to improve transparency and reliability in gas markets. One such approach could be to identify and define non-competitive situations that may require enhanced regulatory paradigms to ensure reasonable rates and competition. Increased transparency of information is also important, such as basic capacity and rate information, better alignment of intrastate & interstate pipeline data, and the enactment of rules to ensure affiliates of pipelines are not afforded a competitive advantage over other sellers of transportation and storage services.

TCPA is reaching out to various stakeholders, seeking input and promoting a collaborative approach to fix what ails the current system. Current and future electric reliability and predictable electric costs for consumers are directly impacted by the issues on intrastate pipelines.

VIII. 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.

In addition, the following changes have been made:

- Mapping the critical infrastructure between the gas industry and the electric industry
- Phase II weatherization requirements for generators and transmission owners have been adopted. Attestations of compliance and subsequent inspections will occur over the next few months.
- A firm fuel service was implemented and the first procurement took place in advance of this winter. An expansion of the service is being evaluated and executed by ERCOT and the PUC
- Weatherization requirements were adopted for gas infrastructure critical to supplying fuel for power generation
- A new independent board was appointed at ERCOT with no affiliation to the electric industry
- A new ERCOT CEO was hired with expertise in both the electric and gas industries

- The PUC was expanded from three commissioners to five, with all five newly appointed following Winter Storm Uri
- The PUC evaluated and hired consultants to model different market mechanisms to better align the electric market with reliability requirements contained in SB 3, while spurring investment in new and existing generation

Examples of actions taken by TCPA members include:

- 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.
- 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.
- 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. The phase II market redesign report was recently published by the PUCT and is presently out for public comment, prior to potentially being adopted on Dec. 15th. Phase II plans should provide a comprehensive solution that incentivizes investment in current infrastructure as well as provide for new investment in dispatchable generation resources.

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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