**LEGISLATIVE & REGULATORY UPDATE**

Volume 16 – December 19, 2022

**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](https://competitivepower.org/) to our website.

If you are interested in knowing what generation resources TCPA member companies have, here is a [LINK](https://competitivepower.org/map/) to our interactive map. The data can be searched by company, fuel type and county.

**Texas Legislative Hearings**

1. **Senate Committee on Business & Commerce (B&C)**

On November 17th, Senate B&C met to deliberate a comprehensive interim charge regarding the electricity market in Texas. The discussion included SB 2 & SB 3 implementation, grid reliability, market redesign and new dispatchable generation, and the impact of renewables and electric vehicles on the grid.

The bulk of the hearing was focused on the establishment of a new reliability standard required by SB 3 and the mechanism to accomplish that standard. PUCT Chairman Lake stated his belief that the 1-in-10 year loss of load expectation (0.1 LOLE) reliability standard, which is common across the electric industry, would be the most appropriate and expressed his support for the Performance Credit Mechanism (PCM) as the preferred way to achieve that standard. Lake highlighted the PCM would deliver 10 times the improvement in reliability for less money than ratepayers would pay in the absence of action. Lake also explained that to benefit from the PCM generators would have to perform during the highest risk hours. He clarified that Texans would be paying for performance, not for capacity.

Pablo Vegas, President and CEO of ERCOT, noted that there is an imbalance in the current energy-only market and a need for more dispatchable generators.

Committee members were in agreement that the grid needs more reliable, dispatchable generation. There was also consensus that this needed to be achieved in a cost-effective manner to limit the financial impact on ratepayers. However, there was some debate over the type of mechanism that should be adopted.

While several Committee members mentioned a backstop proposal, such as the Berkshire Hathaway Energy proposal, Chairman Lake explained that the backstop is not a comprehensive solution. He added that the backstop is by definition a capacity market because we are paying for generators not to generate on a daily basis and is an out-of-market service that will reduce the availability of other gas generators. These generators would only come online when the grid was in crisis, so they would likely not help reduce times of scarcity.

* 1. **B&C Committee Letter to PUCT**

Following the hearing, the Committee members sent a letter to the PUCT requesting that the Commission not adopt market design changes such as the PCM without further consultation with the Legislature. The Committee also requested that the PUCT first define reliability goals for ERCOT and evaluate the impact of creating a new market-based ancillary or reliability service to meet this standard.

1. **House Committee on State Affairs**

On December 5th, the House Committee on State Affairs met to receive an update on the proposed changes to the ERCOT market design. Similar to the Senate B&C Committee, the State Affairs Committee largely focused on the PCM concept proposed by the PUCT.

PUCT Chairman Lake’s testimony was consistent with his earlier testimony at the Senate B&C hearing. Lake made it clear that while the PUCT is leaning towards the PCM concept, the PUCT would not take any operational action until they receive guidance from the Legislature.

Rep. Todd Hunter asked Lake if the PCM would guarantee new generation, to which Lake responded that it would. Lake stated that the plan could be fully implemented as early as 2026.

ERCOT President and CEO Pablo Vegas told the Committee that the state’s growth is putting increasing strain on generation. He also warned that there are still some extreme weather scenarios that could lead to rolling blackouts. Vegas was very clear that new gas generation is critical to future reliability in ERCOT and that this is not just an operational issue, rebutting testimony from the Independent Market Monitor and industrial consumers which denied that Texas needs more investment in dispatchable generation.

* 1. **TCPA Testimony**

Michele Richmond, TCPA Executive Director, testified during the hearing that TCPA members stand ready to build nearly 4,600 MW of new, dispatchable gas generation if the PCM is adopted under the right framework. This stands in direct contrast to other parties that testified in favor of an “uncertainty product” ancillary service, who offered no interest in investing to meet Texas’ reliability needs if their proposal were to be adopted.

Richmond reiterated that adopting the PCM would provide the regulatory and legislative certainty needed by investors and lenders to take on the risk of building new plants. The current market does not support that investment, nor would new or additional ancillary services. Additionally, the lack of market and legislative certainty of ERCOT valuing reliability and resources with an on/off switch, coupled with a more than 300% increase in gas costs, has already resulted in the suspension of year-round operations for a 568 MW gas plant in Dallas. The plant has been relied upon by ERCOT throughout 2022 and has been RUC’d regularly. A filing discussing the resource’s situation and the company’s support for the PCM as a mechanism to remedy the market issues in ERCOT can be read [HERE](https://interchange.puc.texas.gov/Documents/54335_21_1255729.PDF).

Richmond also offered an explanation of why other proposals such as the backstop, low interest loans, and ancillary services would not achieve the long-term goals of the Legislature. Further, she warned the committee about the financial and operational challenges faced by current plants due to continued usage of Reliability Unit Commitment (RUC).

* 1. **Press Release**

Immediately following the State Affairs hearing, TCPA issued a press release reiterating the testimony provided by Richmond regarding the commitment of TCPA members to bring nearly 4,600 MW of new gas generation to the ERCOT market if PCM is adopted under the right framework. Furthermore, the release highlighted the need for regulatory and legislative certainty that is lacking in the current market design to facilitate investment. Please note that a power marketer and industrial consumer company in TCPA, Shell, has taken a position contrary to that of TCPA and all of its other members (primarily generation companies). Industrial consumers benefit from the current market design and lack of long-term reliability because they:

* Receive a $75 million capacity payment under the Emergency Response Service (ERS) program that pays industrial consumers just to be available in case ERCOT needs them to turn off – this is paid for by residential and small business consumers in ERCOT;
* Can reduce their power usage when ERCOT is in or close to a crisis, selling power they bought in forward markets at a significantly lower cost ($20-$50 per MWh) back to Texas consumers at the much higher scarcity price in real-time (up to the current $5,000 per MWh cap);
* Are connected at the transmission level in most cases and do not experience load shed when ERCOT orders wire and poll companies to reduce their customer load; and
* Reduce their own costs for transmission using a sophisticated tool in this market, known as 4CP, which increases the transmission costs residential and small business consumers pay on the regulated portion of their electric bills (estimated to be a $75 million per year cost shift from industrial consumers to residential and small business Texans).

1. **Sunset Advisory Commission**

On December 7th, the Sunset Advisory Commission met to discuss the Sunset staff reports for PUCT, ERCOT and OPUC. Sunset staff began by highlighting the current lack of resources at the PUCT. The agency has only about 200 staff to regulate three industries and implement new market design. Staff contrasted this with the roughly 1,000 employees at the Railroad Commission (RRC) and the 600 employees at the Texas Alcoholic Beverage Commission.

In addition to staffing and resource concerns, Commission members asked several questions regarding the oversight of ERCOT by the PUCT and the level of independence ERCOT should have. Chairman Lake acknowledged his belief that, following SB 3, it was clear the PUCT was ultimately responsible for the health of the grid.

The Commission appeared supportive of the 0.1 LOLE reliability standard and the need for more dispatchable generation. Of note, Public Member Jeff Austin expressed concern about losing current generation and asked if the PUCT had considered telling generators that they could not close any plants for the next couple of years. Chairman Lake responded that the PUCT recognizes they need more reliable dispatchable power and they are looking at how to accomplish that in the cheapest, most reliable way.

It should be noted that a current process called “Reliability Must Run” or RMR exists in ERCOT to prevent the retirement of a generation resource that is needed for reliability (typically a temporary bridge to allow the transmission system to be modified to address the loss of the generator on the grid). The designation of a resource as RMR is bad for a competitive market for multiple reasons:

* It is exponentially more expensive for consumers when these resources are deployed (very close to the price cap of $5,000);
* It signals to investors and companies that the market is no longer working and stifles any investment in that market;
* It sends signals to companies that ERCOT will require you to continue operating even when your plant is no longer economic which is a disincentive for any company to invest in existing or new resources in that market; and
* It extends the life of old, uneconomic resources at a high cost with no replacement resources of commensurate reliability status on the horizon.
  1. **TCPA Testimony**

During public testimony, Richmond provided comments supporting the expansion of resources for the PUCT and the establishment of a reliability standard. She noted that the reliability standard would be a critical signal to the market to indicate what ERCOT wants in terms of resource development and investment.

Richmond further noted TCPA’s concerns with the dilution of the stakeholder process in ERCOT. She explained that this process has historically provided for an extensive review and vetting by experts from a broad cross-section of industry that has resulted in a better end product.

Finally, Richmond shared TCPA’s belief that the protocol revision process should include an opportunity for written and oral briefing before the PUCT makes a final decision on approval or rejection of protocol revision. This would ensure the PUCT considers the perspective of all market segments, not just that of PUCT/ERCOT staff.

**Comments Submitted**

1. **Firm Fuel Supply Service (FFSS)**

TCPA filed comments on December 9th with ERCOT regarding the proposed qualifications for a new option for providing Firm Fuel Supply Service (FFSS) in ERCOT. TCPA expressed their support of the inclusion of resources with firm gas storage and firm transportation delivery contracts in FFSS. TCPA also highlighted the need for the following considerations:

* The natural gas curtailment prioritization rule recently adopted by the RRC effectively lowered the priority of gas generation resources below entities like water and wastewater treatment plants, dialysis centers, and nursing homes because those facilities were added to the definition of human needs while gas power plants were not. With the FFSS Qualifying Pipeline requirement as proposed, gas power plants cannot be served by pipelines that also serve human needs customers. Without revisions to the gas curtailment rule or contractual evaluation of priority, TCPA believes most generation resources would fail to qualify for this FFSS product if it is connected to an intrastate pipeline that also has firm obligations to human needs customers.
* TCPA also voiced their concern that without transparency about firm shippers on a pipeline, it is unclear how ERCOT will verify that a pipeline serving resources is not serving any human needs customers. As a result, TCPA recommended clarity to ensure that generation is held harmless regarding confirmation of information for which it does not have first-hand knowledge.
* Given that curtailment may be achieved through declaration of an operational flow order (OFO), TCPA requested ERCOT consider incorporating rules for non-force majeure curtailments. It is unclear if intrastate pipelines and entities providing contracts to gas generation resources will agree to the contract provisions required by ERCOT. Without these changes, the vast majority of gas generation resources in ERCOT will likely not qualify to provide this service. TCPA companies own 82% of the gas power plants in ERCOT and 77% of those are only on intrastate pipelines.
* Finally, TCPA suggested that both bundled and unbundled contracts for firm gas transport and firm gas commodity should be considered for qualification of delivered products to provide FFSS.

TCPA’s full comments can be found [HERE](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fcompetitivepower.org%2Fwp-content%2Fuploads%2F2022%2F12%2FFINAL-TCPA-Comments-on-FFSS-12-9-22.docx&wdOrigin=BROWSELINK).

1. **Load Management Programs – Project No. 38578**

On November 28th, TCPA submitted comments to the PUCT recommending that the notices of Transmission/Distribution Service Providers to implement load management programs for the upcoming winter be rejected and the programs be halted.

TCPA explained that these pilot programs had initially been approved only for winter 2021-2022 and that a subsequent report from June 1, 2022 showed these programs to be more costly to consumers than Emergency Response Service and not utilized at all. Allowing these programs for winter 2022-2023 would be an unnecessary cost to Texas residential consumers and a sign of continued, unaccounted for out-of-market actions that disincentivize construction of new reliable generation.

Furthermore, in receiving initial approval to implement the programs last winter, the PUCT had instructed ERCOT to move forward with implementing a protocol change approved more than two years ago that would avoid negative market impacts from the deployment of the out-of-market load management programs.

The full comments can be found [HERE](https://competitivepower.org/wp-content/uploads/2022/11/Final-TCPA-Comments-on-TDSP-Notice-to-Launch-Winter-Load-Management-Pilot-Programs-Filed-11-28-22.pdf).

1. **North American Reliability Corporation (NERC) – Docket No. RD23-1-0000**

On December 8th, TCPA filed comments with the Federal Energy Regulatory Commission (FERC) regarding NERC’s Petition for Approval of Proposed Reliability Standard EOP-012, weatherization requirements. TCPA urged FERC to remand the Petition and direct NERC to address several concerns.

Chiefly, TCPA members request FERC to clarify that lack of cost recovery is a commercial restraint to implementation of Requirement R1 and any Corrective Action Plan (CAP) under Requirement 2 or exception under Requirement R7. Independent generators in the ERCOT market bear greater financial risk in that they do not receive cost recovery to comply with standards. This competitive disadvantage will be exacerbated by the significant costs required to comply with the proposed reliability standard if cost recovery is not included as a commercial constraint within the Standard’s language.

Additionally, TCPA recommended several other changes as follows:

* More precise language for some of the proposed definitions used in the standard;
* Clarification of the temperature standards so that operators fully understand the corresponding expectations;
* Reconsideration of the proposed 12-hour timeframe for the continuous operations standards because it may create a disadvantage for new thermal generators relative to some renewable generators;
* Specification of when the 5-year clock in R4 starts;
* Require an annual statement by Generator Owners that they are on schedule with a CAP as opposed to periodic progress reports;
* Violation severity levels should be applied to a single facility and be based on components that failed or those that do not have a CPA following a Generator Cold Weather Reliability Event; and
* A good cause exemption needs to be maintained for a variety of situations that materially impact a resource owner’s ability to comply with both NERC and other standards.

TCPA’s comments can be read in their entirety [HERE](mailto:https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20221208-5198&optimized=false)

1. **Review of Market Reform Assessment Produced by Energy and Environmental Economics (E3) – Project No. 54335**

On December 15th, TCPA submitted comments to the PUCT on behalf of all TCPA members, with the exception of Shell, expressing their support for the establishment of a mandatory reliability standard and the adoption of a mechanism, such as the PCM, to achieve that standard.

The comments note that the industry standard 0.1 LOLE reliability standard is a good starting point due to its familiarity and use in other markets. The E3 report found that only three of the studied options would achieve the standard at a comparable cost to consumers and in an efficient manner, one of those being the PCM.

The PCM lacks the administrative complexity and market concerns of the other two options. It is also projected to achieve 10 times the reliability of the status quo at only a 2.2% increase in cost. For these reasons, the comments implore the PUCT to adopt a reliability standard and pursue the PCM as soon as possible in order to provide the regulatory certainty needed for new investment in dispatchable generation.

Despite being a novel concept, the PCM could be implemented given that its operating components are straightforward and familiar. In fact, if implemented properly and accompanied by a reliability standard, the PCM will incentivize dispatchable generation in a manner consistent with the Legislature’s and the PUCT’s goals for reliability. TCPA believes the specific mechanics of the PCM, such as determining the critical hours of operation, can be refined during the implementation process.

If the PUCT were to properly implement a mechanism such as the PCM, TCPA members are prepared to bring nearly 4,600 MW of additional generation to ERCOT.

TCPA provided additional comments in response to questions from PUCT staff. These responses can be read in their entirety [HERE](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fcompetitivepower.org%2Fwp-content%2Fuploads%2F2022%2F12%2FFinal-TCPA-comments-on-E3-Market-Design-Report-Filed-12-15-22.docx&wdOrigin=BROWSELINK).

**TCPA Welcomes New Director of Communications and Administration**

On December 5th, TCPA welcomed Paul Townsend as Director of Communications and Administration. Townsend was most recently with the office of Senator Nathan Johnson and staffed five members from both parties of the Texas Legislature in total throughout his decade of legislative experience. He also worked for two state agencies and lobbied for a trade association prior to joining TCPA.

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

Michele Richmond, Executive Director                                              Eric Woomer

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