



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 approximately 2/3 of the total non-wind electric generating capacity in ERCOT and comprise approximately 50% of the total ERCOT generation fleet. TCPA members own more than 82% of the natural gas generating capacity in ERCOT. Member companies include publicly traded entities, privately held companies, and private equity funded entities. Some companies have retail affiliates; however, the majority do not.

TCPA member companies include Calpine, Cogentrix, Constellation (formerly Exelon), EDF Trading North America, Luminant (Vistra), NRG, Rockland Capital, 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.

Seasonal Assessment of Resource Adequacy (SARA) and Capacity, Demand and Reserves (CDR) Reports

On May 3rd, ERCOT released the [latest SARA and CDR](#) reports, which showed there will not be enough dispatchable power available to meet demand on the hottest days this summer. In a [press conference to discuss these reports](#), PUC Chair Peter Lake explained, “The Texas grid faces a new reality. Data shows for the first time that the peak demand for electricity this summer will exceed the amount we can generate from on-demand dispatchable power. So, we will be relying on renewables to keep the lights on.” Lake added that the lack of dispatchable power was the result of Texas having 24% population growth since 2008, but only a 1.5% increase in dispatchable generation during that same period. He also noted that the market had responded favorably to the PUC’s adoption of the PCM, but that what happens next depends on actions of the Legislature.

ERCOT CEO Pablo Vegas went on to explain that ERCOT plans to operate a reliable and resilient grid this summer utilizing the available tools and conservative operations. However, he stated, “The urgency to move forward with meaningful electric market reforms that will incentivize the



development of dispatchable generation remains extremely high.” Vegas reiterated Lake’s assertion that Texas needs more dispatchable supply to meet the state’s growing population and electricity demands. “The Urgency to act is now. The urgency is high,” Vegas stated. “We need to make changes soon to incentivize dispatchable generation.”

Michele Richmond, Executive Director of TCPA, responded to the CDR and SARA with the following statement:

“The CDR and SARA confirms what we already knew – ERCOT needs more dispatchable generation to meet peak net load. It underscores the importance of implementing a functional PCM that sends the market signal to retain existing dispatchable generation for now and to build new dispatchable generation for the future. Texas’ continued economic development miracle hinges on reliable energy, and the PUC-adopted PCM market will ensure its successful continuation, while nothing being currently considered by the Texas Legislature will do that. TCPA members have announced 4,500 MW of new gas generation, but that is in jeopardy of being canceled if SB 6, SB 7, SB 1075 or SB 2012 are enacted into law. The CDR and SARA show the urgency to Texas’ future success of those 4,500 MW and a market that signals new build.”

New Generation Announcements Highlight Need for Functional Performance Credit Mechanism (PCM)

On April 12th, TCPA member [Calpine announced the relaunching of their Texas power plant development program](#) due in large part to the PUC’s adoption of the PCM. In addition to the previously announced 425 MW gas-fired power plant in Freestone County, Calpine revealed plans for another 425 MW gas-fired plant in Guadalupe County and a large-scale combined cycle gas generation power plant. In a press release, Caleb Stephenson, Executive Vice President of Commercial Operations, offered the following explanation for Calpine’s announcement: “We are encouraged that the PUC has laid the foundation to ensure Texas maintains a reliable power supply through market-based mechanisms, and we are excited to move forward with projects that will deliver on that mission. We look forward to the PUC’s final actions.” Stephenson added, “Our hope is that the legislature will respect the regulatory certainty offered by the PUC and avoid discriminatory programs or direct government procurement that would undermine competition in Texas.”

On April 19th, in testimony before the House State Affairs Committee regarding Senate Bill 2012, Rockland Capital Managing Partner Scott Harlan announced an additional 500 MW of natural gas generation the company would build, in addition to 50 MW already planned, if PCM is implemented in the ERCOT market. Harlan explained the PCM sunset provision in Senate Bill 2012 – which has since been removed from the bill – and the \$500 million cost cap would cause



Rockland Capital to cancel that development because they create statutory uncertainty about the market's future and create a default statutory reliability standard without relation to actual load growth, retirements or new generation capacity needed to ensure Texans have power any time of day or night and regardless of weather. That would make new development too risky and uneconomic to move forward. Significant discussions regarding implementation of a price cap, which protects consumers while ensuring they have reliable power, rather than a cost cap are ongoing.

On April 24th, [NRG announced the potential to add 1,500 MW of new gas generation](#) in the Houston area if a functional PCM is implemented in the ERCOT market. The new development would include a 689 MW combined cycle natural gas unit, 417 MW of simple-cycle natural gas peaking units, and a 436 MW simple-cycle natural gas peaking unit. In a press release, NRG Head of Competitive Markets and Policy said, "NRG intends to put steel in the ground with the potential for up to three new units in Texas. While there are many factors that will need to come together for NRG to move forward with these plans, having a functional PCM is a critical step."

On May 1st, [WattBridge reiterated their intention](#) to add at least 1,600 MW to ERCOT should the PCM be implemented appropriately. WattBridge President Mike Alvarado explained, "Our business requires the PCM (Performance Credit Mechanism) as adopted by the PUCT (Public Utilities Commission of Texas) to support new development and retain existing dispatchable generation; without the regulatory certainty that allows us to invest in a 30-year asset, we simply cannot move forward."

PROENERGY CEO Jeff Canon, who manufactures the gas-turbine packages used by WattBridge in the plants, also recognized the importance of the PCM and his concerns with the "guardrails" currently proposed in bills such as SB 2012. Canon asserted, "No owner can withstand the proposed changes to the PCM, and PROENERGY provides, hands down, the lowest installed rate in the industry," he says. "I suspect that not one megawatt of dispatchable power could be built; in fact, the movable nature of dispatchable power might see units redeployed out of the state."

88th Texas Legislature

With only a few weeks left in the 88th Texas Legislature, there is still a chance several bills impacting the state's electric market could be passed. Unfortunately, several bills still in play would likely do more harm than good. Below are some of the bills TCPA cautions against enactment because they will discourage private investment in the ERCOT market, making the grid less reliable.



1. Mobile Generation (SB 1075)

Under current law, Transmission and Distribution Utilities (TDUs) may lease and operate facilities that provide temporary emergency generation under certain limited conditions, such as recovery from a storm or a load shed event ordered by ERCOT. This allows for temporary emergency generation to be used only in isolation from the bulk power system that ERCOT operates.

SB 1075 would expand the conditions to allow usage before an actual outage, which would negatively impact the wholesale electric market by crossing the lines between rate-regulated TDUs and competitive market generators. TDUs are regulated entities with a guaranteed rate of return in which all costs and the accompanying rate of return are paid by Texas consumers in the delivery portion of their electric bill. Generation is a competitive service in which companies risk their private capital, not consumers' money, to come to market and produce power, receiving no cost recovery and no guaranteed rate of return and earning revenue only when producing power for Texans. Under SB 1075, Texas residential and small business consumers – captive ratepayers – would be charged for this market distortion and step towards re-regulation of generation through an increase in the delivery charges they pay on their monthly electric bills.

TCPA believes Texans are best served by TDUs investing in their primary responsibility, transmission and distribution, rather than in generation – mobile or stationary. Emergency mobile generation is an issue worthy of consideration by the Legislature, but it would be best accomplished through using state funds to support critical loads' procurement of their own backup generation or to procure mobile generation that is owned and deployed as needed by the Texas Department of Emergency Management (TDEM). TDEM is in charge of all emergency operations for the state, including winter storms, hurricanes, and other severe weather. With regional centers all over the state, they are in the best position to know where the risk is, pre-position the mobile generators where needed, and maximize consumer dollars by not duplicating assets throughout the state in each TDU service territory.

TDEM could also be charged with reporting back to the Legislature on a state-wide basis regarding the prevalence of need, amount needed, trends on areas or type of disasters in which these are useful tools, and to make recommendations on efficiencies or alternatives to best serve victims of these disasters. In any event, the use of emergency backup generation must be limited to actual emergency events and not interfere with the normal functioning of the ERCOT competitive wholesale market.



In the Senate Business & Commerce Committee, Beth Garza with R Street Institute, a nonprofit, nonpartisan, public policy research organization whose mission is to engage in the promotion of free markets, shared similar concerns. [“SB 1075 is an unfettered giveaway to regulated distribution utilities and has the potential cause harm to both the competitive wholesale and retail markets,”](#) Garza stated. Garza also served as the Independent Market Monitor (IMM) for ERCOT for many years and is knowledgeable about the market in ERCOT.

SB 1075 has been set for hearing in the House State Affairs Committee on May 15th and TCPA will continue to urge for changes to the bill to avoid negative impacts to the competitive generation market. Texas’ grid is already suffering from a deficit of dispatchable generation, and this bill would only further discourage investment in ERCOT.

2. Market Redesign

a. SB 6 & SJR 1

This California-style legislation would require the state to procure as much as 10,000 MW of backup generation which would sit idle much of the year. While the cost was initially estimated to be roughly \$10 billion, documents subsequently unveiled by reporters showed the cost could be closer to \$18 billion. On top of the construction costs, Texans would also have to pay for a guaranteed rate of return.

Michele Richmond, Executive Director of TCPA, explained that the bill would harm the competitive market and health of the grid. “It represents a costly tax on consumers that does not improve reliability,” Richmond stated. “Unfortunately, it sends a clear message that Texas does not believe in the competitive market and will result in state-owned generation systemwide.” Richmond’s concerns were shared by many, including a [Wall Street Journal editorial](#) which pointed out the bill would distort the market.

The bill was referred to the House Committee on State Affairs on April 17th but has yet to be set for a hearing. TCPA urges the Committee to leave this legislation unheard to avoid immense damage to the competitive electricity market.

b. SB 2627 & SJR 93

Chairman Schwertner filed SB 2627 & SJR 93 on May 1st and promptly voted them out of the Senate Business & Commerce Committee the following day. The legislation would see Texas spend up to \$7.5 billion to provide subsidized 0% interest loans to companies that build new



natural-gas power plants or keep older plants online for five years. The state would also spend \$2 billion on bonuses to companies if the new plants become operational by the end of 2026.

As with SB 6, SB 2627 would have a negative impact on the competitive market by providing the new generation an advantage over existing generation. This would likely hasten retirements of older thermal plants, so it is unclear how much net gain in dispatchable generation would result.

Further, the bill would do nothing to address the underlying reasons why investors are hesitant to invest in new thermal generation in ERCOT. Without addressing the problems with the market, which the PCM proposes to do, then companies would struggle to build even at 0%. If they cannot make sufficient revenue to repay the loans, it would not be economically rational to build regardless of this legislation.

The bill was heard in the House State Affairs Committee on May 10th with witnesses discussing potential pros and cons of the legislation. TCPA is currently neutral on the legislation assuming some critical improvements are made to minimize market distortions, prevent severe damage to the competitive market, protect consumers (aka taxpayers or ratepayers) from risking investment with entities at higher risk for default, and to ensure commercial lending standards are employed in rules developed to evaluate the worthiness of credit applicants. These recommendations include:

- Reduce the total amount of MWs eligible for loans from 10,000 MW to 5,000 MW (in line with the most recent ERCOT CDR report indicating that deficiency in 2028).
- Require a 50/50 split of debt and equity and other common debt terms to be commensurate with commercial lending practices and more in line with the capital structure for rate-regulated utilities.
- Utilize either 0% loans or a completion bonus instead of both, since authorizing entities to receive both will result in taxpayers funding 95% of the cost to build the new plants which would be fully in the competitive market and chill any private investment in the market going forward, similar to SB 6.

These changes are aimed at ensuring existing generation assets are not overly disadvantaged versus new assets because of this legislation as well as ensuring new assets that do not receive preferential loans backed by the state are not at a competitive disadvantage to those that do receive the loans, likely causing cancellation or significant delay of investment from private capital.



Given some of the concerns raised during the hearing, Chairman Hunter requested that stakeholders provide feedback regarding potential changes to the committee by 3PM on May 12th. TCPA companies will be providing their feedback to the Senate as well as the House.

c. SB 7

SB 7 contains a series of proposals that would make Texas' grid less reliable and more expensive. First, the bill also would establish a complicated cost allocation scheme that could lead to the premature retirement of existing dispatchable generation resources. It allocates costs associated with dispatchable generation investment and performance to other dispatchable generators based on their forced outage rates. Forced outage rates are largely a function of the market being uneconomic for dispatchable generation as well as the conservative operations under which ERCOT has been running the grid. It would disadvantage the very resource type the state says it wants to incentivize to develop. Next, it would create a new ancillary service, the dispatchable reliability reserve service (DRRS), which would not solve the ultimate problem facing the grid – resource adequacy – while shifting costs from large industrial customers to residential consumers and small businesses. Finally, the bill also includes unnecessary roadblocks to successfully implementing the PCM as adopted by the PUC, neutering the market and reducing reliability.

The bill was heard in the House State Affairs Committee on May 3rd and left pending. TCPA opposes the legislation in its current form but is open to working with the Legislature on improvements.

d. SB 2012

SB 2012 seeks to put “guardrails” on the PCM by imposing unnecessary and onerous restrictions on the reliability market. Among other things, the legislation includes a \$500 million annual cost cap which TCPA and others have warned will prevent the PCM from successfully incentivizing dispatchable generation in the manner envisioned by the PUC. The cost cap effectively establishes a statutory reliability standard by specifying the Legislature will only allow for as much reliability as \$500 million will provide, without respect to load growth, fuel resource mix, generation retirements, federal EPA standards, or weather changes that impact reliability outlook. This is in the context of a \$20+ billion annual wholesale market in ERCOT. In order to work, the PCM must function as any other market does, based on supply and demand concepts in concert with a reliability standard currently being established. An artificial cost cap on the PCM renders it ineffective and results in new development being canceled. Price caps would be a better alternative, as they are currently utilized in other parts of the ERCOT market and protect consumers from unchecked costs while ensuring the market continues to function.



A recent [Fox News article](#) echoed many of TCPA's concerns, noting this bill "could 'kneecap' new fossil fuel generation." In the article, Brett Bennett, Policy Director at the Texas Public Policy Foundation (TPPF), specifically shared TCPA's opposition to a cost cap. Bennett told Fox News that he also favors price cap because a cost cap would "be very hard to design" and that \$500 million would be insufficient. Bennett added, "We at TPPF don't think it's a good idea." Brad Jones, former president and CEO of ERCOT, told Fox News that "Senate Bill 2012 is designed to end PCM," and to "kneecap the PCM proposal."

The bill is currently in the Calendars Committee where it will hopefully remain. TCPA believes that the details of the PCM are best designed through the stakeholder and rulemaking process at the PUC but has supported and will continue to support reasonable guardrails that truly protect consumers while providing the reliability Texans deserve.

3. Sunset (HB 1500)

The PUC is the state agency charged with regulating the state's electric, telecommunication, and water and sewer utilities. Currently, the PUC would be sunset on September 1, 2023. HB 1500, which passed the House 140-1, would continue the agency until 2029. The bill would improve public input and transparency in PUC matters.

The bill was heard in the Senate Business & Commerce Committee on May 11th. TCPA urged passage of the Sunset bill to maintain regulatory certainty and encouraged that no amendments be added.

4. Market Monitor Report (SB 2010)

SB 2010 would require the PUC to annually report to the legislature the number of instances in which the independent market monitor (IMM) for ERCOT reported "potential market manipulation" to the PUC or PUC staff. The report would also include the laws or rules alleged to have been violated and the number of instances for which the PUC instituted a formal investigation or staff initiated an enforcement action. Currently, the IMM regularly sends the Commission Requests for Information (RFIs) on matters in which the IMM is concerned there may be potential market manipulation. The IMM testified in the House State Affairs Committee on March 29th in a discussion of HB 4862, the House companion, that "maybe 30% to 50%" of RFIs trigger an investigation, meaning up to 70% do not.

While TPCA supports the investigation of potential abuses, there are concerns that this report would create a presumption that if the IMM sends out RFIs and they do not trigger an



investigation, then the PUC is not doing its job. However, according to the IMM's own testimony many RFI's do not result in a formal investigation or enforcement action. As Richmond testified on the companion bill, "Potential violations are not violations." Under current law, enforcement actions are already public. It is unclear what this report would do other than highlight the number of times the IMM refers potential market manipulation instances to the PUCT, the vast majority of which do not warrant formal enforcement action.

Richmond presented changes in both the Senate and House committees that would remove any opposition by TCPA to the bill. First, the report should make it clear that entities are innocent until proven guilty by ensuring no entities are named solely on the basis of an allegation. Further, if the goal of the report is to highlight potential violations, then it should be expanded to cover all types of violations, not just market manipulation. Lastly, the PUC should report on investigations that are opened or closed, not just enforcement actions that are initiated subsequent to investigation.

SB 2010 is currently in the House Calendars Committee and TCPA continues to oppose the bill as the concerns raised in both the Senate and House committees have not been addressed to date.

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

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