**PROJECT NO. 54585**

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| **EMERGENCY PRICING PROGRAM** | **§****§****§** | **BEFORE THE****PUBLIC UTILITY COMMISSION****OF TEXAS** |

**TEXAS COMPETITIVE POWER ADVOCATES (TCPA) ON PUCT STAFF QUESTIONS**

 Texas Competitive Power Advocates (“TCPA”)[[1]](#footnote-2) respectfully submits the following comments in response to Public Utility Commission of Texas (“PUC” or “Commission”) Staff questions for stakeholder comments issued on July 25, 2023. These comments are timely filed.[[2]](#footnote-3)

**GENERAL COMMENTS**

 TCPA appreciates the opportunity to provide general comments on the Emergency Pricing Program and respond to the questions posed by PUC Staff in their July 25, 2023 memo. As an initial matter, the Staff memo does not raise certain important topics that the Commission should also address before implementing the Emergency Pricing Program. First, the provisions of Public Utility Regulatory Act (“PURA”)[[3]](#footnote-4) § 39.160 are not clear regarding what reference price is to be used for triggering the Emergency Pricing Program. While the statute provides for the trigger to be prices at the high system-wide offer cap (“HCAP”) for twelve (12) hours in a twenty-four (24) hour period, it is unclear where and how that price should be measured. A specific reference settlement price point should be clarified in rule, and TCPA recommends the use of the ERCOT Hub Average 345 kV price as defined in Section 3.5.2.6 of the ERCOT Nodal Protocols. The Hub Average 345 kV price is the simple average of the North Hub, South Hub, Houston Hub, and West Hub 345 kV prices, and therefore broadly represents ERCOT system conditions and is not as easily swayed by local issues such as transmission congestion, and is therefore more appropriate to use as a reference for triggering a system-wide price control such as the Emergency Pricing Program.

Second, it is critical that the Emergency Pricing Program be relatively short-term and temporary in nature. The Emergency Pricing Program is conceptually at odds with the current ERCOT market structure that depends almost exclusively upon scarcity in real-time energy price signals to align supply and demand over the long term, because it directly interferes with the price mechanism’s ability to efficiently allocate scarce resources. That is not to impugn the function of the Emergency Pricing Program—namely to provide a market circuit breaker to avoid extreme outcomes when market signals are stretched to their limits—but rather to underscore the fact that the Emergency Pricing Program must be a temporary injunction that readily returns to market efficiencies once the exceptional market event has passed. Along similar lines, the Emergency Pricing Program furthers the need for a functional Performance Credit Market (“PCM”) to efficiently align market outcomes with policymakers’ reliability objectives. The impact on pricing and reliability of the Emergency Pricing Program will be an important component for properly managing the grid moving forward. As such, TCPA recommends the Commission require that future ERCOT reliability and Independent Market Monitor (“IMM”) market analyses account for these emergency price caps. Astrape, or any other contracted analytics firms, employed by ERCOT or the Commission for resource adequacy evaluation, should be required to include these emergency price caps in their modeling.

Third, the Peaker Net Margin (“PNM”) and the low system-wide offer cap (“LCAP”) exist to prevent continued prices at the HCAP and to protect the market from rare, extreme outcomes when market signals are not able to optimize supply and demand as in normal times. With the implementation of the Emergency Pricing Program—a statutory circuit-breaker to protect consumers and other market participants in the same manner as the PNM and LCAP—retention of those mechanisms in the ERCOT market will be in many ways duplicative. Termination of PNM and LCAP upon implementation of the Emergency Pricing Program will provide certainty to market participants and consumers regarding pricing reduction triggers and will allow for a more robust analysis regarding the Emergency Pricing Program’s impacts on reliability and pricing. The 12-hour trigger replaces the need for PNM as a trigger and the Emergency Pricing Program replaces the need for LCAP.

Finally, if a generator is being dispatched and its costs exceed the cap, then that generator should be made whole – not only to “marginal” costs, but to reasonable and verifiable *operating* costs during the time that the Emergency Pricing Program is in effect. This is an important part of equity in the market to ensure no resource is losing money due to regulatory market intervention when they are dispatched. This was recognized in the statute and is one of the most critical components of implementation to ensure that the ERCOT market does not signal to resource owners an intent for them to operate at a loss. Ensuring generators are made whole during times the Emergency Pricing Program is in place will be critical to future reliability and investment in this market and retention of needed generation.

**RESPONSE TO QUESTIONS POSED**

**Question 1:** **Once an event has triggered the emergency pricing program, what criteria should the Commission use for determining when the emergency pricing program will cease and no longer be active?**

To avoid uncertainty and time constraints, TCPA recommends the Commission set a formulaic determination and automatic reset for ceasing use of the Emergency Pricing Program based on objective criteria. Normal pricing needs to resume as soon as practicable after an event in order to ensure a functional energy market. While many will associate Energy Emergency Alert (“EEA”) events with prices reaching and remaining at the HCAP for a prolonged period, it is not inconceivable that the market could be at the cap for 12 hours in a 24-hour period and not be in an EEA event. Thus, given the potential for the Emergency Pricing Program to be triggered outside of traditional emergency events, it is critical that prices return to normal as soon as feasible following activation of the program.

TCPA offers the following mechanism for consideration, for both triggering activation and termination of the program. Twelve (12) cumulative hours' worth of SCED runs at the HCAP (based on the ERCOT Hub Average 345 kV price) in a rolling 24-hour period would result in automatically capping prices at the Emergency Pricing Program price beginning in the next operating hour. This formulaic mechanism would promote transparency in market pricing.

Pricing under the Emergency Pricing Program pricing should terminate on the first operating day for which the Day-Ahead Market (DAM) can be run after the Emergency Pricing Program price trigger is no longer in effect, taking that change into account. For example, once there are no longer 12 cumulative hours priced at HCAP in the rolling 24-hour reference period, if there is sufficient time for DAM bids and offers to take this into account (e.g., 1-2 hours before the DAM submission deadline), then the Emergency Pricing Program would be lifted at the start of the next operating day (“operating day 2”). If not, it would defer to the operating day (“operating day 3”) after that (to allow the DAM for operating day 3 to take the removal of the price cap into effect). This is very similar to the process that ERCOT currently uses to implement the LCAP under Protocol Section 4.4.11.1.

The Emergency Pricing Program price and duration need to be a pre-determined amount and time to enable ERCOT to code it into their systems as opposed to requiring any regulatory body or individual to manually implement the changes. The Commission should also require ERCOT to send a market notice each time that the Emergency Pricing Program is triggered as well as when the trigger ends and normal pricing will be resumed. This transparent notification process will be important for market participant awareness and Emergency Pricing Program reporting.

**Question 2: What value should the emergency pricing program cap be set at? Should the cap differ for energy and ancillary services?**

It is important to note that the Emergency Pricing Program was enacted when HCAP was still at $9,000. Since that time, the cap has been reduced by nearly half to $5,000. Forward markets will inevitably factor in whatever price is set by the Commission because it will reduce revenue opportunity that provides signals that new investment is needed. The emergency price therefore should be set at a price consistent with the level of reliability the Commission is trying to achieve so the signals to participate in forward markets, self-commit, new build investment, or industrial and residential demand response are minimally impacted.

There is no longer a need for the PNM or LCAP once an event cap such as the Emergency Pricing Program is implemented. The Emergency Pricing Program will become the circuit-breaker price trigger, eliminating a need for both.

The cap for energy and ancillary services should be the same. Any differentiation between them in the Emergency Pricing Program price cap would create a disincentive to provide one or the other. Implementing the same cap for both will ensure there is not a disincentive to participate in either the energy market or the ancillary services markets.

**Question 3: PURA § 39.160(g) requires that the emergency pricing program allow generators to be " reimbursed for "reasonable, verifiable operating costs that exceed the emergency cap What types of costs are appropriate for reimbursement under this requirement? How should these costs be recovered?**

The statute says reasonable verifiable operating costs are to be recovered. In extreme operating events generators regularly incur additional operating expenses that may not be strictly considered "marginal costs" - such as additional staffing, heating/cooling equipment, water treatment, chemical supplies, or backup fuel procurement. All operating costs, including all costs associated with purchasing and delivering fuel and other materials needed in the production of electricity to the generator are reasonable, verifiable operating costs that should be reimbursed.

These costs should be recovered through a two-step settlement process that utilizes the Fuel Index Price (FIP) (or other verified other fuel cost) and the unit heat rate along with a resettlement process that incorporates actual costs once those costs have been submitted by the generator. The statute does not provide for a value judgment or subjective call by ERCOT and requires the full recovery of those costs to ensure dispatched generators are not losing money.

Costs should be recovered through load ratio share allocation.

**Question 4: How often should the Commission review each of the system-wide offer cap programs, including the low system-wide offer cap, the high system-wide offer cap, and the emergency pricing program?**

The language in the statute requires review once every five (5) years so TCPA recommends adopting language in the rule that tracks PURA § 39.160 (f). It is also reasonable to expect that the first utilization of the Emergency Pricing Program will yield insights that may warrant an event-based review outside of that normal 5-year cadence.

**Question 5: Are there any additional policy issues the Commission should address in a proposed rule implementing PURA § 39.160?**

The Commission is interested in and has ERCOT been working on establishing a

reliability standard for the ERCOT market. Any price caps in the market need to be modeled in their reliability analysis associated with that effort, and the cap established in this rulemaking should be included in ERCOT’s associated modeling and reliability analysis.

As mentioned above, the PNM is no longer necessary once this program is implemented and should be removed.

**Conclusion**

TCPA appreciates the Commission’s consideration of these comments and looks forward to working with other interested parties in this rulemaking.

Dated: August 15, 2023

 Respectfully submitted,

 

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**EXECUTIVE SUMMARY OF TCPA COMMENTS**

* Clarify specific settlement price point that triggers the EPP (i.e. ERCOT Hub Average 345kV price)
* Trigger and return to normal prices should be formulaic and automated
* Require ERCOT & IMM market analyses to account for EPP price caps
* PNM & LCAP are duplicative of EPP & should be terminated upon implementation of EPP
* Generators must be made whole to reasonable & verifiable operating costs not only to marginal costs during time EPP is in effect
* Market notice should be required anytime EPP is triggered and upon return from EPP to normal market pricing
* Market depends on scarcity pricing which no longer correlates to Energy Emergency Alerts (EEAs) so EPP could be triggered outside of EEA
* EPP price and duration should be pre-determined and coded into ERCOT systems so no regulatory body or individual is needed to manually implement
* Cap should be the same for energy and ancillary services to avoid any disincentive to providing one over the other
* All operating costs associated with purchasing and delivering fuel and other materials needed to produce electricity are reasonable, verifiable operating costs that must be reimbursed
* Two-step settlement process could utilized to recover reasonable, verifiable operating costs with FIP and unit heat rate followed by resettlement process that incorporates actual costs once those have been submitted by the generator
1. 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 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 participating in this filing own more than 55,000 MW of generating capacity in ERCOT, representing billions of dollars of investment in the state, and employing thousands of Texans. TCPA member companies participating in these comments include: Calpine, Cogentrix, Constellation (formerly Exelon), EDF Trading North America, Hull Street Energy, LS Power, Rockland Capital, Shell Energy North America, Talen Energy, Tenaska, TexGen Power, Vistra, and WattBridge. NRG is filing company comments separately. [↑](#footnote-ref-2)
2. Project No. 54585, Staff Questions for Stakeholder Comment (Jul. 25, 2023) (setting deadline of August 15, 2023 for stakeholder comments). [↑](#footnote-ref-3)
3. Tex. Uti. Code §§ 11.001-66.016 (“PURA”). [↑](#footnote-ref-4)