**PROJECT NO. 54585**

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| **EMERGENCY PRICING PROGRAM** | **§** | **PUBLIC UTILITY COMMISSION** |
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## TCPA COMMENTS ON PFP

Texas Competitive Power Advocates ("TCPA")[1] respectfully submits the following comments in response to the Proposal for Publication ("PfP") amending 16 Texas Administrative Code ("TAC") §25.509, relating to Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region and implementing the Emergency Pricing Program ("EPP") as directed in SB 3, 87th Regular Legislative Session.

## GENERAL COMMENTS

TCPA appreciates the opportunity to provide some general comments in addition to the recommended redline changes to the PfP that are included in comments. The primary areas addressed in comments are the verbal request for comments from Commissioner McAdams during the September 14, 2023 Open Meeting regarding capping the reasonable verifiable operating costs a generator can recover under the EPP to the High Cap ("HCAP"), changes to better define the process for EPP and align the rule with statute, and the duration of the EPP when triggered outside of emergency operations.

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[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 separate comments.

## I. The Commission should not cap generator cost recovery in this rule and should adopt cost recovery language that follows statute regarding "operating" vs. "marginal" costs.

During the September 14, 2023 Open Meeting in which this PfP was sent to the *Texas Register* for comment, Commissioner McAdams commented from the dais that he would like commenters to address whether the ability of a generator to recover its costs should be capped, possibly at HCAP, to prevent customers from undesirable consequences of "seemingly arbitrary price changes" that are "influenced by commodity prices over which we [the Commission] have no control."[2]

TCPA appreciates the expressed concern, but respectfully submits that this rule is not the appropriate channel to address them. Rather, TCPA recommends the Commission reflect the plain language of the statute in its rule, which says "the emergency pricing program must allow generators to be reimbursed for reasonable, verifiable operating costs that exceed the emergency cap."[3] While the EPP is intended as a circuit-breaker to protect consumers from continuing HCAP during an emergency, it is also intended to ensure generators, on which consumers depend for electricity, are not running at a loss during such conditions. The protection in this section of the statute does not discuss recovery of "marginal costs," as the PfP states, but of "reasonable, verifiable *operating* costs" with no cap on the recovery of those costs. It is important, particularly during emergency conditions and during times in which price is set administratively and not by the market, that resources are able to recover the costs of expenses required for them to operate

[2] Comments by Commissioner McAdams starting 1:53, Agenda item 31, PUC Open Meeting on September 14, 2023.
[3] Public Utility Regulatory Act, §39.160 (g).

and produce power. This is a necessary coordination of policies that this rule must get right or risk unintended (but foreseeable) negative consequences.

The commodity prices referenced by Commissioner McAdams as not within the Commission's control are likewise also outside of a resource owner's control. If the Commission were to choose to cap costs a generator can recover, there are significant negative consequences that may result. For instance, some resource owners may not run if they are unable to cover their costs, or alternatively face severe financial losses and potentially even bankruptcy if they do run and those incurred costs are subsequently not reimbursed. Neither would be a desirable outcome for consumers, for resource owners, or for grid reliability. The circuit breaker function only works if it reduces financial risk symmetrically.

The recovery of costs, as mandated by this statute, is not providing any type of windfall for a resource owner but merely recognizes that the state does not expect a generator to operate at a loss to produce power during an emergency when the administratively set price is below the resource's operating cost. And while fuel costs understandably are front-of-mind for many stakeholders given the experience of Winter Storm Uri, it is important to note that there are many other non-fuel costs that a resource incurs to operate during extreme weather conditions. These additional operating expenses may not be strictly considered "marginal costs" – such as additional staffing, heating/cooling equipment, water treatment, chemical supplies, or backup fuel procurement. These operating costs are real and taken on in support of grid reliability, but with an expectation that the market will support those prudent decisions.

At no time during the legislative process did any iteration of SB 3 contemplate either limiting cost recovery to only marginal costs or implementing a cap on recovery of costs, and the language in the engrossed/enacted bill clearly mandates recovery of "actual costs.".[4] It is counter to the policy goals of the state to adopt a rule that limits cost recovery under the EPP to marginal costs instead of the verifiable operating costs clearly required by the statute.

Again, while TCPA shares Commissioner McAdams' stated concerns about the natural gas market during extreme events, this rulemaking is not the appropriate place to address that concern. Rather, this rule should both reduce price risk for consumers <u>and</u> help to ensure that generators do not have to think about the risk of not recovering their operating costs to produce power when the market is operating under extreme circumstances. Therefore, TCPA strongly recommends the rule be amended as provided in redlines below, to track the statutory language of "reasonable, verifiable operating costs," that the Commission provide for full recovery of those costs, and acknowledge that existing ERCOT settlements processes may not fully address cost recovery needs under the EPP.

## II. The rule should replace "emergency operations" with "firm load shed," or alternatively define "emergency operations."

The next recommendation is to replace, or alternatively define, the term "emergency operations" as part of this rule if the Commission retains the EPP duration requirements proposed in subsection (c)(3). The term is critical to the exit from EPP but is not defined in any location and open to subjective interpretation. A clearer, objective definition that can drive automatic deactivation of the EPP needs to be adopted as part of this rule and should leave no room for debate about what does or does not constitute emergency operations.

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[4] SB 3, Engrossed Version, 87th Regular Legislative Session, p. 20, lines 13-15.

That definition should provide a bright line point in time that is clear to all market participants and policymakers. Replacing "emergency operations" with "firm load shed" in the criteria for deactivating the EPP or alternatively defining "emergency operations" as a period in which ERCOT has initiated involuntary load shed is the most clear and appropriate definition. Every consumer, policymaker, and market participant understands that involuntary load shed is only initiated after all out-of-market tools have been deployed and every available generator is online and producing (or providing necessary reserves). This is not an arbitrary call that would leave room for second-guessing or critique and is very transparent. TCPA has included this recommended definition in its redlines and urges the Commission to include that definition in the final rule adopted.

## III. Address DAM coordination with EPP and make the EPP deactivation timelines symmetrical

The next recommendation concerns clarity of how the Day Ahead Market ("DAM") will process when the EPP is triggered. TCPA recommends that (1) the Commission delegate to ERCOT the development of *automatic* EPP activation/deactivation with instructions to encourage DAM participation and convergence with real-time market outcomes; and (2) that the contemplated timelines for EPP deactivation align with the beginning of an operational day, so that the EPP is in effect for time periods that align with the DAM. As TCPA explained in its prior comments in this rulemaking, it is critical that the activation and deactivation of the EPP be predictable and objective.

Such clarification is necessary to prevent a chilling of participation in the DAM. It is unclear how the DAM will run as the market transitions into and out of EPP. Without clear rules, there will be a higher risk to offering into the market for the next day because there is no clarity surrounding what price regime will be in place, which changes the economics of fuel purchases and other operational planning. This policy decision must be made in a coordinated fashion with other policy considerations in this rulemaking. For instance, intraday gas prices are not transparent & discoverable so the potential recovery of these costs being limited by a cap makes it very difficult to make decisions regarding DAM offers and fuel purchases.

TCPA highlights concerns about two DAM scenarios that are likely to be realized when the EPP is triggered: one for situations in which the EPP is triggered after offers for the DAM are made and cleared and one for when the EPP is triggered and DAM offers have been made, the DAM process has been running, but the DAM has not yet cleared. For context, when the Low System-Wide Offer Cap ("LCAP") is triggered under current rules, the process contemplates and addresses these issues through a transition occurring over three days, which allows the change in pricing regime to be reflected in the DAM.[5] There are important considerations both for encouraging resources and loads to participate in the DAM – or rather eliminating or minimizing disincentives to DAM participation when the EPP has a higher likelihood of being triggered.

A solution that should be specified in this rule is to direct to ERCOT to establish processes for activation and deactivation of the EPP, with clear direction that DAM participation incentives be maintained. For generators, it is important that bidding behaviors be honored so as not to have a chilling impact on resource owners' willingness to offer into the DAM. The solution to that should be for the DAM process to continue to run as it normally does. This will help to ensure market participants have no doubts about gas procurement going into the DAM and reduce the risk

[5] *See* ERCOT Nodal Protocols § 4.4.11.1

of unnecessary Reliability Unit Commitments (RUCs) if not enough DAM offers are made. It is important to not unintentionally incentivize behaviors that are at odds with policymakers' reliability objectives.

Finally, TCPA is very concerned by the arbitrary seventy-two (72) hour timeframe in the proposed rule regarding exiting the EPP, particularly absent any load-shed. "Emergency operations" should be defined clearly to mean ERCOT initiation of involuntary load shed, as previously mentioned in these comments, and with the statutory trigger for the EPP as "…high system-wide offer cap…in effect for 12 hours in a 24-hour period after initially reaching the high system-wide offer cap…"[6] the 24 hours proposed in the rule when ERCOT exits emergency operations makes rational sense generally, though it would help to align with DAM clearing if it were aligned with the start of the next operational day – very similar to how ERCOT currently manages the transition into and out of the LCAP. However, the PfP's contemplated 72 hour EPP duration when prices have reached the HCAP for 12 hours within a 24-hour period but ERCOT is not in emergency operations has no basis in statute and is far too long to maintain an administratively-set cap, especially if the rule leaves resources with uncertainty about whether or not they can recover their actual operating costs. The goal is to return to normal market conditions as soon as reasonably possible, particularly when ERCOT is not in emergency operations. Therefore, TCPA recommends the same timeframe be adopted for both thresholds in the rule outlining when ERCOT will exit the EPP.

## IV. Evaluate the EPP's market impacts.

[6] PURA §39.160 (b)

TCPA also recommends the Commission evaluate the impacts of the proposed EPP on the market and reliability. Having a program that will systemically change market prices in certain conditions will have an impact on future market signals. We believe it is important to evaluate and understand how this program will impact the market and interact with the other market design initiatives underway.

## REDLINES

TCPA provides subsequent redlines consistent with these comments, which use the PfP as the "clean" basis for redlines shown. TCPA appreciates the Commission's consideration of these important concerns affecting the functioning of the market and the signals that are sent to resource owners and investors about the future of the ERCOT market and the expectation of resource owners to operate at a loss.

**§25.509. Scarcity Pricing Mechanism for the Electric Reliability Council of Texas Power Region.**

(a) **Definitions.** The following terms, when used in this section, have the following meanings, unless the context indicates otherwise:

(1) **Generation entity --** an entity that owns or controls a generation resource.

(2) **Generation resource --** a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource.

(3) **Load entity --** an entity that owns or controls a load resource.

(4) **Load resource --** a load capable of providing ancillary service to the ERCOT system or energy in the form of demand response and is registered with ERCOT as a load resource.

(5) **Resource entity --** an entity that is a generation entity or a load entity.

(b) **Scarcity Pricing Mechanism (SPM).** ERCOT will administer the SPM. The SPM will operate as follows:

(1) The SPM will operate on a calendar year basis.

(2) For each day, the peaking operating cost (POC) will be 10 times the natural gas price index value determined by ERCOT. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) will be measured as an average system-wide price as determined by ERCOT.

(4) Beginning January 1 of each calendar year, the peaker net margin will be calculated as: $\sum((\text{RTEP} - \text{POC}) * (\text{number of minutes in a settlement interval} / 60 \text{ minutes per hour}))$ for each settlement interval when RTEP – POC >0.

(5) Each day, ERCOT will post at a publicly accessible location on its website the updated value of the peaker net margin, in dollars per megawatt (MW).

(6) **System-Wide Offer Caps.**

(A) The low system-wide offer cap (LCAP) will be set at $2,000 per MWh and $2,000 per MW per hour.

(B) The high system-wide offer cap (HCAP) will be $5,000 per MWh and $5,000 per MW per hour.

(C) The system-wide offer cap will be set equal to the HCAP at the beginning of each calendar year and maintained at this level until the peaker net margin during a calendar year exceeds a threshold of three times the cost of new entry of new generation plants.

(D) If the peaker net margin exceeds the threshold established in subparagraph (C) of this paragraph during a calendar year, the system-wide offer cap will be set to the LCAP for the remainder of that calendar year. In this event, ERCOT will continue to apply the operating reserve demand curve and the reliability deployment price adder for the remainder of that calendar year. Energy prices, exclusive of congestion prices, will not exceed the LCAP plus $1 for the remainder of that calendar year.

(7) **Reimbursement for Operating Losses when the LCAP is in Effect.** When the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any actual marginal costs in excess of the larger of the LCAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.

(c) **Emergency Pricing Program (EPP).** ERCOT will administer the EPP. The EPP will operate as follows.

(1) **Activation of the EPP.** ~~The EPP~~ ERCOT must ~~be~~ develop a process to automatically activate~~d~~ the EPP if the average system-wide energy price, as determined by ERCOT, has been at the HCAP for 12 hours within a rolling 24-hour period.

(2) **Emergency Offer Cap (ECAP).** While the EPP is active, the system-wide offer cap will be set to the ECAP. The ECAP will be set equal to the value of the LCAP.

(3) **Duration of the EPP.** ERCOT must develop a process to automatically deactivate the EPP. The EPP will remain in effect until the later of:

(A) ~~72 hours after~~ the end of the next operating day following the activation of the EPP; or

(B) ~~24 hours~~ the end of the next operating day after ERCOT exits ~~emergency operations~~ firm load shed.

(4) **Market Notice.** ERCOT will issue a market notice both when the EPP is activated and when the EPP is terminated.

(5) **Reimbursement for Costs That Exceed the ECAP.** While the EPP is active, ERCOT must reimburse resource entities for any actual ~~marginal~~ verifiable operating costs in excess of the larger of the ECAP or the real-time energy price for the resource. ERCOT ~~must~~ may utilize existing settlement processes to the extent practicable and applicable to verify the resource entity's costs for reimbursement.

(6) **Report.** Within 60 calendar days from the date the EPP is terminated, ERCOT must file a report with the commission that contains the following information:

(A) A summary of the event that triggered the EPP;

(B) An analysis of the EPP's performance while the program was active;

(C) The number of generators that filed for cost recovery under paragraph (5) of this subsection and the total dollar amount of costs recovered with this mechanism; and

(D) Any recommendations to modify or improve the EPP.

(d) **Review of System-Wide Offer Cap Programs.** Beginning January 1, 2026, and every five years thereafter, the commission will review each of the system-wide offer cap programs to determine whether to update aspects of each program.

(e) **Development and Implementation.** ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

## CONCLUSION

TCPA appreciates the opportunity to provide these comments on the PfP and looks forward to continuing to work with the Commission, Staff, and other stakeholders throughout this process.

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Respectfully submitted,

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## EXECUTIVE SUMMARY OF TCPA COMMENTS ON PFP

- **The Commission should not cap generator cost recovery and should adopt cost recovery language that follows statute regarding "operating" vs. "marginal" costs.**
  - The plain language of the statute, which says "the emergency pricing program must allow generators to be reimbursed for reasonable, verifiable operating costs that exceed the emergency cap," should be reflected in the rule
  - If the Commission were to choose to cap costs a generator can recover, there are significant unintended but foreseeable negative consequences that may result (e.g., may not run if unable to cover costs, or face severe financial losses and potentially even bankruptcy if incurred costs are subsequently not reimbursed). The EPP "circuit breaker" only works if it provides symmetrical protection.
  - Rule should acknowledge that existing ERCOT settlements processes may not fully address cost recovery needs under the EPP.
- **The rule should replace "emergency operations" with "firm load shed," or alternatively define "emergency operations."**
  - Replacing "emergency operations" with "firm load shed" in the criteria for deactivating the EPP or alternatively defining "emergency operations" as a period in which ERCOT has initiated involuntary load shed is the most clear and appropriate definition.
- **Address DAM coordination with EPP and make the EPP deactivation timelines symmetrical.**
  - The Commission should delegate to ERCOT the development of *automatic* EPP activation/deactivation with instructions to encourage DAM participation and convergence with real-time market outcomes.
  - The timelines for EPP deactivation should align with the start of an operational day, so that the EPP is in effect for time periods that align with the DAM.
  - The solution to ensure that that bidding behaviors are honored to avoid a chilling impact on resource owners' willingness to offer into the DAM should be for the DAM process to continue to run as it normally does. This will help to ensure market participants have no doubts about gas procurement going into the DAM and reduce the risk of unnecessary Reliability Unit Commitments (RUCs) if not enough DAM offers are made.
  - TCPA recommends the same timeframe be adopted for both thresholds in the rule outlining when ERCOT will exit the EPP. The goal is to return to normal market conditions as soon as possible, particularly when ERCOT is not in emergency operations.
- **The Commission should evaluate the impacts of the EPP on the market and reliability and understand how this program will interact with the other market design initiatives underway.**