**LEGISLATIVE & REGULATORY UPDATE**

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**Texas Competitive Power Advocates (“TCPA”)** is a trade association representing fourteen power generation companies and wholesale power marketers with investments in Texas and the Electric Reliability Council of Texas (“ERCOT”) wholesale electric market. TCPA members provide approximately 2/3 of the total non-wind electric generating capacity in ERCOT and comprise nearly 50% of the total ERCOT generation fleet, including 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, Hull Street Energy, Luminant (Vistra), LS Power, NRG, Rockland Capital, Shell Energy North America, Talen Energy, Tenaska, TexGen Power 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 searchable by company, fuel type, and county.

**ERCOT CEO Update**

During the October 17th ERCOT Board of Directors meeting, ERCOT CEO Pablo Vegas gave the board a presentation touching on several topics, including Summer 2023 operations. Vegas noted the record-setting demand, including 10 new all-time peaks, which contributed to higher energy prices.

Vegas explained that ERCOT procured various ancillary services, including the ERCOT Contingency Reserve Service, to help reliably meet the electricity demands of the summer and address operational challenges. He noted that the cost of ancillary services increased by about $567.7 million. This figure varied greatly from the $8 billion figure that was previously suggested by the Independent Market Monitor. Vegas called the $8 billion “an inaccurate conclusion,” and ERCOT Board Chair Paul Foster said it was “erroneous.”

Vegas’ presentation can be found [HERE](https://www.ercot.com/files/docs/2023/10/17/5%20CEO%20Update%20REVISED.pdf) (See Page 4 for pricing information).

**Emergency Pricing Program (“EPP”) – Proposal for Publication (“PfP”)**

Current law requires the Public Utility Commission (“PUC” or “Commission”) to implement an EPP for the wholesale electric market. To help comply with this requirement, Commission staff issued several questions to solicit stakeholder comments. TCPA submitted initial comments on August 15, 2023, which were summarized in our previous newsletter and can be found in their entirety [HERE](https://interchange.puc.texas.gov/Documents/54585_16_1321783.PDF).

During the September 14th PUC Open Meeting, the Commission discussed a PfP amending the Texas Administrative Code to implement the EPP. Commissioner Will McAdams requested feedback on whether the ability of generators to recover its costs should be capped before the PfP was ultimately approved for publication in the Texas Register for comment and potential redlines.

While TCPA appreciates Commissioner McAdams’ concerns, we do not believe the Legislature intended for generators’ cost recovery to be capped, as the statute says “the emergency pricing program must allow generators to be reimbursed for *reasonable, verifiable*[emphasis added] operating costs that exceed the emergency cap.” The EPP is intended as a circuit-breaker to protect consumers from real-time system-wide energy prices continuing at the high system-wide offer cap (“HCAP”) during an emergency, but it is also intended to ensure generators, which consumers depend on for electricity, are not running at a loss during such conditions.

If the Commission were to cap the recoverable costs, some resource owners may not run. Alternatively, if they did choose to run, they could face severe financial losses and even bankruptcy. Neither result would provide the grid, and ultimately consumers, with the reliability needed.

In addition to addressing Commissioner McAdams’ inquiry, TCPA provided redlines and suggestions on the proposed rule language. TCPA’s suggestions are summarized below:

* The rule should replace “emergency operations” with “firm load shed.” Alternatively, it should define “emergency operations” as a period in which ERCOT has initiated involuntary load shed.
* The rule should delegate to ERCOT the development of automatic EPP activation/deactivation and ensure alignment with the Day-Ahead Market (“DAM”) process to help encourage DAM participation and allow the market to return to normal as soon as possible.
* The PUC should evaluate the impacts of EPP on the market and understand how the EPP will interact with other market initiatives.

TCPA’s comments and redlines can be found in their entirety [HERE](https://interchange.puc.texas.gov/Documents/54585_27_1337564.PDF).

**Texas Energy Fund (“TEF”)**

On September 19th, PUC staff held a public workshop to discuss implementation of the TEF programs established in Senate Bill (“SB”) 2627. Particular attention was given to the loan and completion bonus grant programs.

In an effort to help with the timely and successful implementation of the TEF, TCPA submitted a list of questions (which can be found [HERE](https://interchange.puc.texas.gov/Documents/54999_10_1330601.PDF)) for PUC staff to consider ahead of the workshop. TCPA also participated in the workshop and provided additional comments and suggestions for PUC to consider, as did several TCPA members.

Following the workshop, TCPA submitted additional comments for staff’s consideration. These comments addressed several specific questions posed to stakeholders by PUC staff and are summarized below:

* The PUC should utilize an initial screening mechanism to weed out any applications that will place the TEF’s funds at an unnecessary risk of default. This would help protect the state’s investment by ensuring the TEF is only used on commercially viable projects with vetted developers.
* SB 2627 seeks to add up to 10,000 megawatts (“MW”) of dispatchable generation to ERCOT. To meet that goal, TCPA suggests that the PUC clarify that TEF funds should go towards projects being built for the purpose of providing energy to the wholesale market with any other use being incidental. This approach would maximize the new generation added to ERCOT via the TEF.
* To help the PUC and potential developers meet the statutory timelines in SB 2627, the PUC could bifurcate the application process into two stages – one to screen creditworthiness and other standards for applicants, and a second one to review specific applications for project financing. This could help improve review times and streamline the application process.
* Despite good faith efforts to meet the statutory deadlines, global supply chain issues could prevent successful construction of projects by the completion deadlines. To the extent that these delays are outside of developers’ control, the PUC should consider if these types of delays are "extenuating circumstances" as contemplated by SB 2627 and, therefore, justify extending the completion deadline on a case-by-case basis.
* The TEF’s low interest rates and potential completion bonuses could help attract investment in new dispatchable generation resources in ERCOT, but investors are also seeking regulatory certainty. Concurrent implementation of the policies enacted in recent legislation as quickly as possible will allow the market to stabilize and ease investor concerns.

TCPA’s post workshop comments can be found in their entirety [HERE](https://interchange.puc.texas.gov/Documents/54999_19_1337570.PDF).

**Generation Interconnection Allowance**

House Bill 1500 requires the PUC to amend its substantive rules to implement a cap on the amount of costs incurred to interconnect generation resources directly with the ERCOT transmission system by establishing a reasonable interconnection allowance. Although the legislation gives the PUC some guidance on what must be taken into account when developing the allowance, it leaves the final design of the allowance to the Commission.

To develop the allowance standard, Commission Staff posed six questions for comment on September 25th. They can be found [HERE](https://interchange.puc.texas.gov/Documents/55566_3_1332846.PDF).

Generally, TCPA supports a modification of state regulations to allow a fraction of interconnection costs to generation resources, particularly when those resources are located far from existing transmission, because giving generators of any kind some “skin in the game” with respect to transmission costs promotes economic, effective siting decisions.

TCPA’s submitted comments are summarized in more detail below:

* The allowance should be set at a level that encourages rational and efficient siting decisions.
* The allowance should be the same across all transmission service provider service territories, which is consistent with the system-wide, postage-stamp approach used generally for transmission costs in the ERCOT region. A single allowance would be easier to administer and would be accounted for in project development plans. It would also preserve the open access framework in current law by treating all interconnecting resources the same with respect to the costs to interconnect.
* If a formulaic approach is preferred, the formula should be based on objective criteria that can be uniformly applied to interconnecting entities, should focus on the reliability contribution of the interconnecting resource, and should not be overly complex to administer.
* An analysis of the actual data will need to be done before determining exactly how far back to stop when considering historical costs. Due to recent inflation and supply chain cost increases, it would be unreasonable to consider a historical timeframe significantly beyond three or four years in setting the allowance.

TPCA’s responses can be found in their entirety [HERE](https://interchange.puc.texas.gov/Documents/55566_10_1337576.PDF).

**ERCOT Request for Proposal (“RFP”) for Winter Capacity**

On October 2nd, ERCOT issued an RFP to stakeholders seeking to increase operating reserves for the Winter 2023-2024 peak load season by up to an additional 3,000 MW. These new MW could be in the form of either supply or demand response.

While the RFP listed several mothballed resources as being potentially eligible to offer capacity in response to the RFP, it is unclear at this time what resources may be available by the December 1st target service start date. Some of these resources have been dismantled to some degree and may lack personnel or fuel contracts – all of which would take time to resolve before resuming operations.

The PUC held their 2023-24 Winter Weather Preparedness Work Session on October 20th during which ERCOT discussed the RFP in more detail (the work session is available for viewing [HERE](https://www.adminmonitor.com/tx/puct/open_meeting/20231020/)). ERCOT explained that the RFP was in response to modeling which found there was a nearly 20% risk of an Energy Emergency Alert (“EEA”) event this winter. This would exceed the 10% risk that is considered “elevated” by ERCOT and the additional 3,000 MW would bring the risk below the 10% elevated-risk threshold.

Following ERCOT’s presentation, there was a Question-and-Answer session with stakeholders, including several TCPA members, to discuss potential changes and clarifications to the RFP. ERCOT then issued a revised RFP and Governing Document on October 23rd incorporating some of the concerns raised during the work session.

Proposals are due to ERCOT on November 6th. TCPA will continue to monitor this RFP and work with ERCOT on reliability solutions, as appropriate.

The Revised RFP can be found [HERE](https://www.ercot.com/files/docs/2023/10/23/ERCOT-Contracts-for-Capacity-RFP-Winter-2023-24-revised-10-23-23.docx) and the Revised Governing Document can be found [HERE](https://www.ercot.com/files/docs/2023/10/23/Winter-2023-24-Contracts-for-Capacity-Governing-Document-revised-10-23-23.docx).

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

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