**PROJECT NO. 55948**

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| **REVIEW OF VOLUNTARY MITIGATION PLAN REQUIREMENTS** | **§**  **§**  **§**  **§**  **§** | **PUBLIC UTILITY COMMISSION**  **OF TEXAS** |

**TCPA COMMENTS ON PROPOSAL FOR PUBLICATION OF AMENDMENTS TO 16 TAC §25.504**

Texas Competitive Power Advocates (“TCPA”) appreciates the opportunity to provide the following comments on the proposed amendments to 16 Texas Administrative Code (“TAC”) §25.504 relating to Wholesale Market Power in the Electric Reliability Council of Texas (“ERCOT”) Power Region. It is important to note that a voluntary mitigation plan is just that – voluntary – and that both the Commission and the entities subject to the Commission’s jurisdiction are choosing to enter into (or to withdraw from) such a plan of their own mutual free will. Generally, the proposed amendments track the statutory changes made to Public Utility Regulatory Act (“PURA”) §15.023 as revised in House Bill (“HB”) 1500, 88th Regular Legislative Session. However, in one instance, the proposed amendments go beyond the statutory changes by in essence removing, in part, the voluntary nature of voluntary mitigation plans. The proposed amendments also would benefit from some greater clarity with respect to the definition and notice of a “wholesale market design change” that will trigger a review of a voluntary mitigation plan (in response to Staff’s preamble question). TCPA provides comment and recommended changes on these issues below.

QUESTION POSED FOR COMMENT

**Should the rule define “wholesale market design change,” and if so, how should it be defined?**

TCPA appreciates the Commission’s above question and associated request for comments. The rule should define what constitutes a “wholesale market design change” to emphasize the word “design” and to make it clear that the change must be something “material” that has the substantial likelihood to modify wholesale market commercial operations in a substantial way – for instance, how energy, ancillary services, or reliability services are offered, awarded, or compensated. Otherwise, virtually every Nodal Protocol Revision Request (“NPRR”) could be asserted to be a “wholesale market design change” on first blush without any further context, though they should not be for purposes of the proposed amendments. For example, NPRR1213 is currently pending before the ERCOT Board and proposes to allow distributed generation resources on circuits subject to load shed to provide ERCOT Contingency Reserve Service (“ECRS”). While this clearly will have some impact on the wholesale market (specifically, lowering ERCOT’s standards to provide ECRS), it does not rise to the level of a “wholesale market design change” because nothing about the foundational *design* of the ERCOT market is modified—post-NPRR1213, the market will still be a nodally priced, centrally dispatched, energy-only market with day-ahead assignment of ancillary services that relies on real-time energy scarcity pricing signals for resource adequacy.

The launch of Real-Time Co-optimization, on the other hand, will fundamentally change how ancillary services are awarded and is already recognized in one voluntary mitigation plan as a natural expiration date.[[1]](#footnote-2) It is also reasonable to consider implementation of a new market design element, such as the Performance Credit Mechanism (“PCM”), to be a wholesale market design change since it is a new addition to the ERCOT market *design* (a reliability service) likely to materially impact wholesale market fundamentals by providing a resource adequacy safety net to energy and ancillary service prices. Similarly, the launch of a new ancillary service (such as the Dispatchable Reliability Reserve Service (“DRRS”)) could potentially have a material impact on the market and thus warrant a review.

In other words, the rule should define “wholesale market design change” in a manner that captures changes that are “material,” meaning something “significant, influential, or relevant, especially to the extent of determining a cause or affecting a judgment.”[[2]](#footnote-3) In addition, since there is a requirement to review the mitigation plans within 90 days of such a change, it is critical that a transparent market notice be issued as soon as possible (including ahead of the change) to clearly indicate the date by which the change is considered in effect as well as the date by which the mitigation plans must be reviewed.

To effectuate the above, TCPA recommends amending proposed 16 TAC §25.504 (f)(1) as follows:

(f) **Review of voluntary mitigation plans.**

(1) The commission will review each voluntary mitigation plan adopted under subsection (e) of this section to determine whether the plan remains in the public interest at least once every two years and not later than 90 days after the implementation date of a wholesale market design change. A “wholesale market design change” is a change to the rules or ERCOT Protocols that materially impacts how energy, ancillary services, or reliability services are offered, awarded, or compensated. Commission staff, in consultation with the independent market monitor, will determine when a wholesale market design change requiring review under this paragraph has occurred or will occur. Commission staff will send a market notice to all market participants advising of the implementation of a wholesale market design change, including the date of the change, and the date by which each voluntary mitigation plan must be reviewed to comply with the 90-day requirement.

**ADDITIONAL COMMENTS**

The proposed amendments would create an asymmetry regarding which parties can voluntarily exit a voluntary mitigation plan. The proposed changes in subsection (e) appear to allow the Commission to terminate a voluntary mitigation plan and provide circumstances under which the Executive Director, with Commission affirmation, may also terminate a mitigation plan. However, the proposed rule would require a generation entity to “apply to amend or terminate” its voluntary mitigation plan, which is a substantial departure from current practice and is not contemplated in the statutory changes made under HB 1500. If a generation entity must apply and await action from the Commission or agency staff to terminate its voluntary mitigation plan, then the plan is no longer voluntary. The word “voluntary” means “done, given, or acting of one’s own free will”[[3]](#footnote-4) and the requirement to obtain authorization to terminate a plan entered into voluntarily is contrary to the voluntary aspect of such plans. Consequently, the proposed rule should be revised to maintain the voluntary aspect of voluntary mitigation plans, ensuring a generation entity may terminate such a plan upon notice to the Commission of its intent to terminate and the date on which the termination becomes effective – i.e., the same termination rights that the Commission has under the proposed rule. The requirement to provide notice of an intent to terminate should address the need for an administrative step that makes the Commission and public aware of the generation entity’s decision. TCPA recommends the following change to 16 TAC §25.504 (e)(2) and (3) in accordance with the preceding comments:

(e) **Voluntary mitigation plan.**

(2) A generation entity may terminate a voluntary mitigation plan that applies to the generation entity following at least three working days’ notice provided to the commission and the executive director of the intent to terminate and the date on which the termination will become effective. ~~or commission staff may apply to amend or terminate a voluntary mitigation plan that applies to the generation entity.~~

(3) A generation entity or commission staff may apply to amend a voluntary mitigation plan that applies to the generation entity. The parties to a proceeding related to the approval or amendment of a voluntary mitigation plan are limited to the generation entity applying for the mitigation plan, commission staff, and the independent market monitor.

CONCLUSION

TCPA appreciates the work Staff and Commissioners put into this proposed rule and the opportunity to provide comments to improve the rule and ensure it retains the voluntary aspect of the voluntary mitigation plans while providing transparency regarding what type of wholesale market design changes will trigger a 90-day review and ensure the market is properly notified when such changes are being implemented. We look forward to continuing to work with Staff, the Commission and other stakeholders on this project.

Dated: February 22, 2024

Respectfully submitted,

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EXECUTIVE SUMMARY OF TCPA COMMENTS

* The proposed rule removes the “voluntary” aspect of voluntary mitigation plans by requiring a generator to apply to the Commission and await approval before terminating a VMP. The rule should be amended to require notice to the Commission of intent to terminate the VMP along with the effective date of the termination but should not require commission action.
* The rule should define “wholesale market design change” to make clear that changes triggering the 90-day review of VMPs must be material, having the substantial likelihood to significantly modify wholesale market commercial operations.
* The rule should require a market notice be sent notifying the market of the effective date of a market design change that triggers the 90-day VMP review along with the date by which the review must occur.

1. *Request for Approval of an Amended Voluntary Mitigation Plan for Luminant Energy Company LLC Pursuant to PURA § 15.023(f) and 16 TAC § 25.504(e)*, Docket No. 54739, Order at 13 (March 23, 2023). Specifically, reference Section 3.1.1. [↑](#footnote-ref-2)
2. New Oxford American Dictionary [↑](#footnote-ref-3)
3. *Id*. [↑](#footnote-ref-4)