

**PUC PROJECT NO. 53404**

<b>TEMPORARY EMERGENCY</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ELECTRIC ENERGY FACILITIES</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND LONG LEAD-TIME</b>	<b>§</b>	
<b>FACILITIES</b>	<b>§</b>	

**TCPA’S COMMENTS ON PROPOSAL FOR PUBLICATION (PFP)**  
**OF NEW 16 TAC §25.56 AND §25.59**

Texas Competitive Power Advocates (“TCPA”)<sup>1</sup> appreciates the opportunity to provide comments on the PFP issued on June 13, 2024, relating to Temporary Emergency Electric Energy Facilities (TEEEF) and to Long Lead-Time Facilities.

One of TCPA’s core beliefs is that Texas consumers deserve a reliable electric grid. To that end, TCPA supports a robust and resilient transmission and distribution system that reliably serves customers from the bulk power system, which should obviate the need for TEEEF in many if not most instances while resulting in lower costs to ratepayers. Nevertheless, Texas statute provides narrow authorization for the use of TEEEF resources by a transmission and distribution utility (TDU) to provide temporary emergency electricity to end-use customers in limited identified scenarios involving significant power outages caused by natural disasters or other events that impact local distribution system reliability. To ensure that TEEEF is leased and used for only the narrow circumstances identified by statute, TCPA believes it is vital that the amount of these

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<sup>1</sup> 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, Luminant (a.k.a. Vistra), NRG, Rockland Capital, Shell Energy North America, Tenaska, TexGen Power, and WattBridge.

resources be utilized only for their statutorily authorized use cases and be rightsized to each TDU's particular needs because those costs are ultimately borne by ratepayers.

A preapproval process, coupled with a reasonableness and necessity evaluation, statutorily limited deployments, and robust reporting requirement should allow the Commission to ensure the TEEEF amounts and expenditures are appropriately rightsized and are capable of providing greater benefit to consumers than alternative uses of ratepayer dollars and that justify TEEEF's disruption to normal market operations.

### **COMMISSION ISSUE 1**

*The commission's current precedent in distributed cost recovery factor proceedings addressing TEEEF costs is that "[a]bsent any applicable [c]ommission rule that provides otherwise, the determination of reasonableness and necessity must be made at the time the [c]ommission approves the [TEEEF] costs." (See Docket No. 53442, Item 166). The proposed rule, instead, requires a TDU to obtain preapproval for the amount of TEEEF generating capacity the TDU seeks to lease and defers the commission's evaluation of the reasonableness and necessity of the TDU's TEEEF costs to the TDU's next comprehensive base rate case.*

*The commission requests comments on the legal support and policy benefits for each of these approaches and on any process efficiencies either of these approaches will provide.*

TCPA does not opine on which process would be most advantageous but identifies issues that should be considered regardless of the process used. First, it is important that there are guardrails in place that protect ratepayers from unnecessary costs and market participants from unnecessary interference with normal market operations. As such, the amount of TEEEF generating capacity should be rightsized for each particular TDU. When determining the appropriate amount of TEEEF, the Commission should also consider the improvements to resource adequacy that can be expected once the new reliability standard and any necessitated market design changes are implemented, as well as other investments in resiliency that the PUCT has directed, authorized, or

otherwise expects the TDU to deliver, reducing the potential need for TEEEF. Stated another way, the Commission should carefully evaluate the assumptions underlying the TDU's planned procurement of TEEEF and determine if those assumptions are reasonable given overall improvements to resource adequacy and other existing or potential distribution resiliency investments in ERCOT.

Second, rather than require TDUs to seek preapproval for every instance where a TDU seeks to add individual generating resource units to an existing lease of TEEEF, the Commission should consider if it is appropriate to set a maximum preapproved leasing amount at the outset when the TDU first seeks to lease (or renew or extend a lease for) TEEEF for use in an area. This consideration should include an estimate of the impacts to end-use customers in the TDU's service territory and would prevent a TDU from leasing more than is appropriate given that they are rate-regulated and not subject to competition. In setting the maximum preapproved leasing amount, the Commission should also weigh the cost-benefit of whether it is more cost-effective for the TDU to invest in reliable transmission and distribution (T&D) facilities (and associated maintenance) in the first place and/or to take the measures identified in the TDU's respective resiliency plan, rather than spend ratepayer money executing leases for TEEEF to react to real-time failures of the T&D system.

Third, for those TDUs that have previously leased TEEEF, it would be appropriate for the Commission to determine if the TDU has done so effectively and efficiently to ensure they are not seeking to lease TEEEF (or renew or extend a TEEEF lease, as discussed further below) in excess of what the TDU has a demonstrated need for. To that end, the Commission should review the quantity leased by the TDU, the amount used since the onset of the lease term, the cost to consumers, the impact on other market participants, and the impact on consumer outages and time-

frame consumers are without power. If the Commission determines the quantity, cost or any combination is not appropriate, the Commission should order a review (and potentially deny a requested lease renewal or extension) to address the over-procurement and ensure ratepayers are not charged for expenditures that have not provided a benefit to them.

Last, when considering events that resulted in a significant power outage in the determination of the reasonableness and necessity of the TEEEF amount requested, Winter Storm Uri should be appropriately weighted. Rather than size the TEEEF based on resource-adequacy based events like Uri for which the Legislature and the Commission have already taken steps to mitigate the risks of repeating, the determination should be based largely on natural disasters that are localized in nature. For example, the impact of hurricanes, tornadoes, and similar events may be more appropriate for coastal utilities while winter storms with their attendant ice accumulation may be relevant for utilities in northern or western parts of the state. The Commission should also consider consumer investment in backup power capabilities as well.

## **COMMISSION ISSUE 2**

***Proposed §25.56(c) requires a TDU to obtain commission approval for the amount of TEEEF generating capacity the TDU seeks to lease.***

***a. Should a TDU be required to obtain commission approval before entering into, renewing, or extending a lease involving a TEEEF? What are the advantages and disadvantages of such a requirement?***

In the interest of ensuring that the amount of TEEEF being leased is rightsized to each TDU, Commission approval should be required before entering into, renewing, or extending a lease involving a TEEEF. In keeping with the language in proposed subsection (k), TCPA does not believe the Commission should continue to renew grandfathered leasing amounts without a review

and pre-approval of each renewal or extension. The review should ensure consistency with statute and that the resources are used and useful – and are reasonably expected to remain so.

For example, the Commission review should ensure that the leased mobile generation is truly mobile. The review should also determine if the resource has actually been used – not just simply prepositioned. This will help reduce the risk that ratepayers would continue paying for a potential over-procurement without the TDU successfully demonstrating to the Commission why such an extension or renewal is warranted. To assist in this fact-finding process, a required reporting of each use of a generating resource, consistent with the proposed §25.56(f)(9), should be included in the final rule.

***b. If the rule should contain a pre-approval process, what is the appropriate level of granularity for the commission's review? For example, should the commission preapprove the sizes and types of units the TDU seeks to lease?***

TCPA does not believe that the pre-approval process should be overly prescriptive on the type or size of individual generating resource units. Rather, the Commission should review the overall amount of TEEEF a TDU seeks to lease in relation to the area, the likelihood of events that would necessitate use of TEEEF, the storm hardening measures taken by the utility, other resiliency measures that might be more cost-effective, and the cost to ratepayers.

At a later date, the Commission should review the cost reasonableness, including how much was used in relation to costs incurred by ratepayers for the units. Similarly, the Commission should consider the prudence of extending or renewing a lease of those units.

### **COMMISSION ISSUE 3**

*Proposed §25.56(f)(9) requires a TDU to file an after-action report with the commission following each TEEEF deployment. The commission requests comments on the proposed required contents of these after-action reports. Specifically, should the TDU be required to provide more granularity on the size and types of units deployed? Conversely, should the TDU be required to provide information on any leased TEEEF that was not deployed, and why?*

TCPA believes that the after-action report filed with the Commission following each TEEEF deployment should provide more granularity regarding the deployment of TEEEF, including the type and size of units deployed, the location of deployment, and the ownership of the TEEEF lease (i.e., leased by the TDU deploying the TEEEF or leased by another TDU). It would also be appropriate for the TDU to provide information on any leased TEEEF that was not deployed.

Additional details and recommendations for after-action reporting can be found below in the proposed redlines to §25.56(f)(9).

### **RECOMMENDED CHANGES TO PROPOSED RULE**

TCPA offers the following changes to the proposed rule and provides redlines to the proposed rule, which is copied in its entirety, further below:

Section 25.56(b)(2) – TCPA proposes that the definition of TEEEF be more closely modeled after the statutory definition, to ensure that TDUs lease only the types of facilities for the specific purposes outlined in the Public Utility Regulatory Act<sup>2</sup> § 39.918.

Section 25.62(c)(1) – TCPA proposes that the Commission take into account the particular TDU's investments in resiliency and/or resiliency plan, if applicable, in approving the amount of TEEEF,

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<sup>2</sup> Tex. Util. Code §§ 11.001-66.016.

in order to ensure that the TDU is not recovering for duplicative, and potentially unnecessary, efforts related to resiliency. TCPA also recommends that the TDU be required to characterize the probability of reoccurrence of historical service interruptions.

Section 25.56(c)(2) – TCPA proposes adding specific notice and intervention provisions to the rule, to specifically acknowledge that third parties can participate in these proceedings. These proposed edits are modeled after 16 Tex. Admin. Code § 25.62, which is the Commission rule addressing TDU resiliency plans.

Section 25.56(d) – TCPA proposes striking the word “significantly” in the phrase “may not significantly exceed” in defining how much TEEEF capacity a TDU may lease in an emergency procurement and, instead, requiring that the capacity be rightsized. Given the amount of time TDUs have had with this tool prior to this rulemaking, the circumstances in which emergency procurement would be necessary should be very small and should have a higher hurdle with the Commission. These resources should also not be eligible for extension or renewal without prior Commission authorization.

Section 25.56(e) – TCPA proposes striking the phrase “reasonably practicable” in the context of the competitive bidding requirement and instead requiring that competitive bidding be used in all circumstances outside of emergency procurement. Rather than leave a potentially ambiguous term in the rule, TCPA’s proposed edits would effectively define what “reasonably practicable” means, i.e., in all non-emergency situations.

Section 25.56(f) – TCPA proposes a few changes to this subsection of the rule:

- First, the final rule should not give discretion to the TDU to determine when a significant power outage has occurred, as the statutory definitions are clear and objective.

- Second, TCPA notes that the definitions of “significant power outage” in statute are purely retrospective in nature and the deployment of TEEEF is meant to “aid in *restoring* power to the utility's distribution customers *during* a significant power outage.” Therefore, the rule’s contemplated pre-deployment of TEEEF and proactive disconnection of a portion of the distribution system from the bulk power system using TEEEF is not permissible under PURA. Thus, TCPA recommends revising the proposed rule to comport with PURA by removing all references contemplating pre-emptive TEEEF deployment.
- Third, TCPA proposes that after-deployment reports be filed with the Commission within 30 days and proposes additional content for such reports, including more specific information on the timing for the deployment and the decision to deploy, which customers and service addresses were impacted (to be filed confidentially), whether the TDU used facilities that it leased (or that another TDU leased), whether the deployment was in front of or behind the meter, and whether any data corrections were (or will be) made and the associated timing.

TCPA has included the entire proposed rule below and has reflected its proposed edits with single underlines and strikethroughs, in red font for ease of review:

#### **§25.56. Temporary Emergency Electric Energy Facilities (TEEEF).**

- (a) **Applicability.** This section establishes the requirements for a transmission and distribution utility (TDU) to lease, operate, and recover costs associated with a temporary emergency electric energy facility (TEEEF). This section applies to a TDU, other than a river authority, that operates distribution facilities in the Electric Reliability Council of Texas (ERCOT) region to serve distribution customers.



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

(1) **Significant power outage** -- an event that:

(A) causes the independent organization certified under Public Utility Regulatory Act (PURA) §39.151 for the ERCOT region to order a TDU to shed load;

(B) the Texas Division of Emergency Management, the independent organization certified under PURA §39.151 for the ERCOT region, or the executive director of the commission determines is a significant power outage; or

(C) results in a loss of electric power that:

(i) affects a significant number of a TDU's distribution customers, and has lasted, or is expected to last, for at least six hours;

(ii) affects distribution customers of a TDU in an area for which the governor has issued a disaster or emergency declaration;

(iii) affects distribution customers served by a radial transmission or distribution facility, creates a risk to public health or safety, and has lasted, or is expected to last for, at least 12 hours; or

(iv) creates a risk to public health or safety because it affects a critical infrastructure facility that serves the public such as a hospital, health care facility, law enforcement facility, fire station, or water or wastewater facility.

(2) **Temporary Emergency Electric Energy Facility (TEEEF)** -- a facility that provides temporary emergency electric energy to aid in restoring power to the utility's distribution customers during a significant power outage in which the independent system operator has ordered the utility to shed load or the utility's distribution facilities are not being fully served by the bulk power system under normal operations, consistent with subsection (f) of this section. ~~on a temporary~~ **basis.**

(c) **Commission review and approval of TEEEF generating capacity.** Except as authorized under this section, before entering into, renewing, or extending any lease involving a TEEEF, a TDU must receive commission approval in a contested case proceeding for the amount of TEEEF generating capacity the TDU seeks to lease.

(1) A TDU must file an application for commission approval for the amount of TEEEF generating capacity the TDU seeks to lease. The application must include the following:

(A) An explanation of all factors that support the reasonableness and necessity of the amount of TEEEF generating capacity requested, including the impact of the TDU's investments in resiliency and the TDU's resiliency plan, if applicable, on the reasonableness and necessity of the proposed amount.

(B) Supporting documentation that demonstrates the reasonableness and necessity of the amount of TEEEF generating capacity requested. This supporting documentation may include historical data on:

- (i) the dates and descriptions of events that resulted in a significant power outage and the probability of reoccurrences;
  - (ii) the number of affected distribution customers and amount of load, in megawatts, that have experienced a significant power outage in the TDU's service territory and the probability of reoccurrences;  
and
  - (iii) the number of critical load and critical care customers, as defined in §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers) affected by a significant power outage. Provide details on the magnitude and a description of the type of affected critical load or critical care customers, as well as the probably of reoccurrences.
- (C) The number of megawatts of TEEEF generating capacity the TDU has under lease at the time of the TDU's application and any relevant information concerning the TDU's existing leases, such as term lengths and types of TEEEF.
- (D) Data must be filed with or submitted to the commission in a format native to Microsoft Excel and must permit basic data manipulation functions, such as copying and pasting of data.
- (2) The proceeding in which a TDU's application is reviewed will proceed on the following timeline.

~~(A)~~ By the day after it files its application, the TDU must provide notice of its application, including the docket number assigned to the application and the deadline for intervention, in accordance with this paragraph. The intervention deadline is 30 days from the date service of notice is complete.

The notice must be provided using a reasonable method of notice, to:

- (i) all municipalities in the TDU's service area that have retained original jurisdiction;
- (ii) all parties in the TDU's last base-rate proceeding;
- (iii) each retail electric provider that is authorized by the registration agent to provide service in the TDU's service area;
- (iv) the Office of Public Utility Counsel; and
- (v) the independent system operator.

~~(A)~~(B) Within 35 days of the TDU filing its application, commission staff will file a recommendation on administrative completeness of the application.

~~(B)~~(C) Within 42 days of the TDU filing its application, the presiding officer will make a determination on administrative completeness.

- (i) If the application is deemed administratively incomplete, the TDU will have 30 days to cure the insufficiency. If the TDU does not cure the insufficiency within 30 days, then the presiding officer will dismiss the application, without prejudice.
- (ii) If the application is deemed administratively complete, within 120 days of the TDU filing its administratively complete application, commission staff must file a recommendation on the reasonableness

and necessity of the TDU's requested amount of TEEEF generating capacity.

~~(D)~~ The commission will issue an order addressing the reasonableness and necessity of the TDU's requested amount of TEEEF generating capacity and include the number of years that the TDU is eligible to lease the requested amount of TEEEF generating capacity.

(d) **Emergency Procurement of TEEEF.**

(1) A TDU may enter into a lease for TEEEF without prior commission approval if the TDU lacks the leased TEEEF generating capacity necessary to aid in restoring power, consistent with subsection (f) of this section.

(2) The amount of TEEEF generating capacity leased by a TDU under this subsection must not ~~significantly~~ exceed the amount of megawatts necessary to restore electric service to the TDU's distribution customers.

(3) The TDU must provide sufficient documentation to support the amount of TEEEF generating capacity leased by a TDU under this subsection during the TDU's next comprehensive base rate proceeding.

(e) **Competitive bidding process.** A TDU must, in all circumstances aside from an emergency procurement consistent with subsection (d) ~~when reasonably practicable~~, use a competitive bidding process to lease TEEEF under this section.

(1) In any proceeding in which the commission is reviewing the reasonableness or necessity of the costs associated with leasing a TEEEF under this section, the

commission may also consider whether the contracts the TDU entered into to lease TEEEF were reasonable relative to other contracts that were available to the TDU.

- (2) In any proceeding in which a TDU is requesting recovery of costs associated with leasing a TEEEF that was not procured using a competitive bidding process, the TDU must demonstrate that the procurement was an emergency procurement consistent with subsection (d). ~~it was not reasonably practicable to use a competitive bidding process.~~

(f) **Deployment of TEEEF.**

- (1) A TDU may deploy TEEEF to aid in restoring power to its distribution customers during ~~an event that a TDU reasonably determines is~~ a significant power outage in which:
- (A) the independent organization certified under PURA §39.151 for the ERCOT region has ordered the TDU to shed load; or
  - (B) the TDU's distribution facilities are not being fully served by the bulk power system under normal operations.
- (2) A TDU that leases a TEEEF must not sell energy or ancillary services from the facility.
- (3) A TEEEF must:
- (A) be operated in isolation from the bulk power system; and
  - (B) not be included in locational marginal pricing calculations, pricing, or reliability models developed by the independent organization certified under PURA §39.151 for the ERCOT region.

- (4) A TDU must notify the independent organization certified under PURA §39.151 for the ERCOT region and all operators of affected generators or load resources ~~at least 10 minutes prior to isolation of the affected area from the bulk power system,~~ immediately upon isolation of the affected area from the bulk power system, at least 10 minutes prior to the reconnection of the affected area to the bulk power system, and after the reconnection has been completed.
- (A) For the purposes of this subsection:
- (i) affected generators or load resources include only those generators and load resources that:
    - (a) are registered with the independent organization certified under PURA §39.151 for the ERCOT region for purposes of settlement; and
    - (b) are located within the portion of the grid that ~~will be~~ has been isolated from the bulk power system while a TEEEF is energized.
- (B) Notices ~~prior to~~ following the isolation of the affected area from the bulk power system must include:
- (i) identification of each substation and modeled load associated with customer load that ~~will be~~ is being served by the TEEEF;
  - (ii) the total amount of load expected to be served by the TEEEF;
  - (iii) the time the affected area ~~is anticipated to be~~ was isolated from the bulk power system;

- (iv) the time the affected area is anticipated to be reconnected to the bulk power system;
  - (v) identification of each affected generator or load resource that is located within the portion of the grid that ~~will be~~ was isolated from the bulk power system; and
  - (vi) a statement that any energy produced by an affected generator during the time it is isolated from the bulk power will not be settled through the independent organization certified under PURA §39.151 for the ERCOT region's systems.
- (C) The notice prior to reconnection of the affected area to the bulk power system must state the anticipated time that the affected area will be reconnected to the bulk power system.
- ~~(D) After the affected area has been isolated from or reconnected to the bulk power system, the TDU's notice must state the time the isolation from or reconnection to the bulk power system was completed.~~
- ~~(E) Except for an isolation of load from the bulk power system due to circumstances beyond the TDU's control, a A TDU's isolation or reconnection of load associated with any energization of a TEEEF that occurs outside of an energy emergency declared by the independent organization certified under PURA §39.151 for the ERCOT region must be coordinated with the independent organization certified under PURA §39.151 for the ERCOT region if the total amount of load at any single substation that would be isolated or reconnected within a period of 10~~



minutes exceeds 20 megawatts. ~~If the TDU has provided notice of an anticipated isolation or reconnection as required by this paragraph, and coordination with the independent organization certified under PURA §39.151 for the ERCOT region results in a delay in the anticipated time of isolation or reconnection, the TDU must notify operators of affected generators and load resources of such delay.~~

- (5) Upon receiving notice from a TDU that an area served by a TEEEF ~~will be~~ has been disconnected from the bulk power system, an operator of an affected generator or load resource that is required by ERCOT protocols to provide status telemetry to ERCOT must, at the expected time of the disconnection indicated in the TDU's notice, update its real-time status telemetry and current operating plan information to reflect that the generator or load resource is disconnected from the ERCOT system and is unavailable for dispatch by ERCOT and will be unavailable for dispatch by ERCOT for the time period specified by the TDU in its notice. Upon receiving notice that the affected area has been reconnected to the bulk power system, the operator of the affected generator or load resource must update the telemetry to reflect the appropriate status of the generator or load resource.
- (6) A TDU's liability related to the provision of service using a TEEEF is governed by §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor-Owned Transmission and Distribution Utilities).
- (7) A TDU will ensure, to the extent reasonably practicable, that:
  - (A) a retail distribution customer's usage during the TDU's operation of a TEEEF is excluded from the electric usage reported to the independent

organization certified under PURA §39.151 for the ERCOT region for settlement and to retail electric providers (REPs) for customer billing; and

(B) Energy generated in an area isolated from the bulk power system during operation of the TEEEF, including any energy generated by an affected generator, is excluded from the generation reported to the independent organization certified under PURA §39.151 for the ERCOT region for settlement purposes.

(8) During an energy emergency declared by the independent organization certified under PURA §39.151 for the ERCOT region, the amount of any load shed by a TDU for the area operated in isolation from the bulk power system during operation of a TEEEF must be accounted for net of any generation in the affected area that was online and producing before the area was isolated from the bulk power system.

(9) Within 30 days ~~F~~ following all deployments of a TEEEF by a TDU, the TDU must file a report with the commission. The report must include:

(A) The type and size of the individual units of TEEEF that were deployed;

(B) The location of the TEEEF deployment;

~~(A)~~(C) The date and time TEEEF was deployed, including the start and end date and time for each unit;

(D) When the utility made the decision to deploy the units;

(E) The name of the TDU that was the lessee for each deployed unit;

(F) The service address(es) and electric service identifiers impacted, which must be filed under seal in accordance with the commission's procedural rules;

(G) Whether the deployment was in front of or behind the meter (per unit);

~~(B)~~(H) The duration that the affected area was isolated from the bulk power system;

~~(C)~~(I) A description of the events that resulted in a significant power outage;

~~(D)~~(J) The number and capacity of generators or load resources that were affected by TEEEF deployment, if any;

~~(E)~~(K) The number and type of critical load, critical care customers, or other critical infrastructure facilities impacted by a significant power outage, if any;

~~(F)~~(L) Details explaining if a significant power outage affected critical load, critical care customers, or other critical infrastructure facilities as described in subparagraph

~~(E)~~(K) of this paragraph. If available, the TDU may also provide details on whether such customers had generation or load resources installed behind the meter at the time of the significant power outage;

~~(G)~~(M) If applicable, the number of megawatts of additional TEEEF generating capacity that were procured under subsection (d) of this section and an explanation for the necessity of the emergency procurement; and

(N) Whether data corrections are or were necessary to ensure compliance with paragraph (7) of this subsection, the date when those corrections were, or are anticipated to be, completed, and the TDU's associated methodology. In the event the TDU will not complete necessary data corrections due to a determination that such corrections are not reasonably practicable, the TDU must provide a detailed explanation in support of this determination.

## CONCLUSION

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

Dated: July 18, 2024

Respectfully submitted,



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**EXECUTIVE SUMMARY OF TCPA COMMENTS**

- A robust and resilient transmission and distribution system that reliably serves customers from the bulk power system should obviate the need for TEEEF in many instances while resulting in lower costs to ratepayers. To that end, a focus on the expeditious restoration to the bulk power system should be prioritized and the TEEEF should work in unison and not delay full restoration efforts.
- TEEEF resources should be utilized only for their statutorily authorized use cases and be rightsized to each TDU's particular needs because those costs are ultimately borne by ratepayers.
- Rightsizing could be accomplished by a preapproval process, which sets a maximum preapproved leasing amount, coupled with a reasonableness and necessity evaluation, statutorily limited deployments, and robust reporting requirements.
- When rightsizing TEEEF, the Commission should consider the improvements to resource adequacy that can be expected once the new reliability standard and any necessitated market design changes are implemented, as well as other investments in resiliency that the PUCT has directed, authorized, or otherwise expects the TDU to deliver, reducing the potential need for TEEEF.
- To that end, the Commission should weigh the cost-benefit of whether it is more cost-effective for the TDU to invest in reliable transmission and distribution (T&D) facilities (and associated maintenance) in the first place and to take the measures identified in the TDU's respective resiliency plan, rather than spend that money in executing leases for TEEEF to react to real-time failures of the T&D system.
- If quantity, cost or any combination is not appropriate, the Commission should order a review (and potentially deny a requested lease renewal or extension) to address the over-procurement and ensure ratepayers are not charged for expenditures that have not provided a benefit to them.
  - The TEEEF determination should be based largely on natural disasters that are localized in nature rather than based on resource-adequacy based events like Winter Storm Uri.
  - Commission approval should be required before entering into, renewing, or extending a lease involving a TEEEF.
  - The Commission should not continue renewing grandfathered leasing amounts without a review and pre-approval of each renewal or extension.
- TCPA specifically recommends the following changes:
  - Section 25.56(b)(2) – the definition of TEEEF should match the statutory definition.

- Section 25.62(c)(1) – the Commission take should take into account the TDU’s investments in resiliency and/or resiliency plan, if applicable, in approving the amount of TEEEF, in order to ensure that the TDU is not recovering for duplicative, and potentially unnecessary, efforts related to resiliency. TDUs should characterize the probability of reoccurrence of historical service interruptions.
- Section 25.56(c)(2) – specific notice and intervention provisions should be added, and the rule should specifically acknowledge that third parties can participate in these proceedings.
- Section 25.56(d) – strike the word “significantly” in the phrase “may not significantly exceed” in defining how much TEEEF capacity a TDU may lease in an emergency procurement and, instead, require that the capacity be rightsized. Emergency procurements should not be eligible for extension or renewal without prior Commission authorization.
- Section 25.56(e) – strike the phrase “reasonably practicable” in the context of the competitive bidding requirement and instead require that competitive bidding be used in all circumstances outside of emergency procurement. “Reasonably practicable” should effectively mean all non-emergency situations.
- Section 25.56(f):
  - The final rule should not give discretion to the TDU to determine when a significant power outage has occurred, as the statutory definitions are clear and objective.
  - The definitions of “significant power outage” in statute are purely retrospective in nature and the deployment of TEEEF is meant to “aid in restoring power to the utility’s distribution customers *during* a significant power outage.” Therefore, the rule’s contemplated pre-deployment of TEEEF and proactive disconnection of a portion of the distribution system from the bulk power system using TEEEF is not permissible under PURA.
  - The after-action report filed following each TEEEF deployment should be made within 30 days and provide more granularity regarding the deployment of TEEEF, including the type and size of units deployed, the location of deployment, and the ownership of the TEEEF lease (i.e., leased by the TDU deploying the TEEEF or leased by another TDU). The report should also provide information on any leased TEEEF that was not deployed.