

# TCPA TIMES



## EXECUTIVE DIRECTOR'S UPDATE

Earlier this month, TCPA members were honored to meet with Chair Christi Craddick and Director of Public Affairs Mia Hutchens Hale from the Railroad Commission of Texas (RRC) to discuss ways in which we could improve collaboration with the oil & gas industry to better serve Texans.

In addition to providing valuable updates on weatherization and other RRC initiatives, Chair Craddick offered a number of suggestions on how TCPA members can help the RRC solve some of the challenges natural gas generators face with reliably procuring the natural gas they need to generate electricity in ERCOT, including the use of gas storage and providing some additional insight into contracts and RRC policies.

Communication between the two industries has increased greatly since Winter Storm Uri, but both industries recognize there may be additional efforts worth pursuing, especially given the evolution of the electric industry with the proliferation of renewables in ERCOT. It is much harder for natural gas plants in ERCOT to forecast how much gas they will need since renewables are typically dispatched first, but further communication between the industries should lead to collaborative solutions that work for both the electric and gas markets.

TCPA values the opportunity to directly engage with the RRC and thanks Chair Craddick and Director Hutchens Hale for their time and thoughtful consideration. We look forward to continuing to work together towards ensuring natural gas generators in ERCOT have the natural gas supply necessary to operate reliably.

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# PUBLIC UTILITY COMMISSION (PUC) NEWS

## COURTNEY HJALTMAN SWORN IN AS PUC COMMISSIONER

On June 26th, Courtney Hjaltman was sworn in as a PUC Commissioner, filling the Commission's final vacancy. TCPA is pleased to welcome Commissioner Hjaltman to the PUC having worked with her in her previous role as the Chief Executive and Public Counsel for the Office of Public Utility Counsel (OPUC).

Commissioner Hjaltman has a long history of state service, having also served as Deputy Legislative Director for the Office of the Governor, a chief of staff in the Texas House of Representatives, and a legislative staffer in the Texas Senate.



Commissioner Hjaltman being sworn in by Chairman Gleeson (photo courtesy of PUC)

## TEXAS ENERGY FUND (TEF) UPDATE

On June 26th, the PUC released a list of the proposed dispatchable power generation projects that had filed a Notice of Intent (NOI) to apply for a TEF loan. In total, the Commission received 125 NOIs totaling 55,908 MWs of potential projects, including over 8,800 MWs of projects by TCPA members. Additional projects not anticipating TEF funds bring the total capacity of new TCPA member projects to almost 10,000 MW of new gas generation in ERCOT.

Filing an NOI was required in order to be eligible to apply to the TEF but does not obligate an entity to apply for funds. The formal application process began on June 1st and will remain open until July 27th. TCPA looks forward to seeing the universe of entities that complete the application process and remains optimistic the TEF will meet the Legislature's goal of spurring construction of new dispatchable generation.

# PUBLIC UTILITY COMMISSION (PUC) NEWS

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## PERFORMANCE CREDIT MECHANISM (PCM) IMPLEMENTATION UPDATE

On May 16th, PUC Staff filed a memo regarding the PCM design parameters that the Commission still needs to resolve. The memo included a series of questions for stakeholder comments on the outstanding issues. TCPA filed a response to those questions on June 20th because the PCM would install a competitive solution for resource adequacy - the most important aspect of reliability in ERCOT. Those comments are summarized below. Additionally, **TCPA remains open to consideration of other competitive market solutions to efficiently address resource adequacy at a reasonable cost to consumers, but such an alternative has not been proposed to date.**

### TCPA'S RECOMMENDATIONS

1. The PCM should focus on the summer and winter seasons given the importance of resource adequacy during those seasons and to not penalize routine plant maintenance in the fall and spring.
2. There should be enough PC hours per season to fairly assess the performance of a resource and value its performance consistency.
3. The amount of PCs earned by each generation resource should be based on availability during the PC hours.
4. When awarding PCs the consideration of duration limitations should be based on actual state of charge.
5. The annual net cost cap would be best allocated throughout the year by reducing the maximum PC price in the ex-ante season demand curves.
6. Adopt a simple, fixed structure for the annual net cost cap to allow for cost certainty.
7. Settle the seasonal PC markets at the end of each season.
8. Settling the PCM daily using estimated payments and charges based on ex-ante PCM pricing would reduce onerous collateral requirements.
9. The proposed start-up and HSL testing requirements are unnecessary.
10. Additional non-performance penalties are unnecessary as there will be natural incentives to perform and substantial financial consequences for non-performance.

# PUBLIC UTILITY COMMISSION (PUC) NEWS

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## RELIABILITY STANDARD UPDATE

On June 13th, the Commission filed the Proposal for Publication (PfP) for a new rule regarding the reliability standard for the ERCOT region.

In addition to requesting comments from stakeholders and the public on the text of the proposed rule itself, the Commission also posed two questions for feedback:

1. What are the advantages and disadvantages of enshrining an exceedance tolerance for magnitude and duration in the commission's rule?
2. Should the exceedance tolerance be evaluated more frequently than the reliability standard? If so, what is the appropriate frequency?

TCPA is currently preparing comments for the PUC's consideration and will file them before the July 15th deadline. The Commission has indicated that they hope to adopt the reliability standard in August.

## TEEEF PFP UPDATE

On June 13th the Commission also filed the Proposal for Publication (PfP) for a new rule regarding the Temporary Emergency Electric Energy Facilities (TEEEF) and Long Lead-Time Facilities. The rule establishes a process to allow a transmission and distribution utility (TDU) to lease and operate TEEEF to aid in restoring power to the utility's distribution customers during a significant power outage.

In addition to requesting comments from stakeholders and the public on the text of the proposed rule itself, the Commission also requested feedback on several specific issues:

1. Requiring a TDU to obtain preapproval for the amount of TEEEF generating capacity they seek to lease and deferring the evaluation of reasonableness and necessity to the next base rate case.
2. The details of the approval process that should be utilized.
3. The information that should be included in the required after-action report filed after each TEEEF deployment.

TCPA is currently preparing comments for the Commission's consideration and will file them before the July 18th deadline.

# ERCOT NEWS

## NPRR1224 APPROVED BY ERCOT BOARD OF DIRECTORS

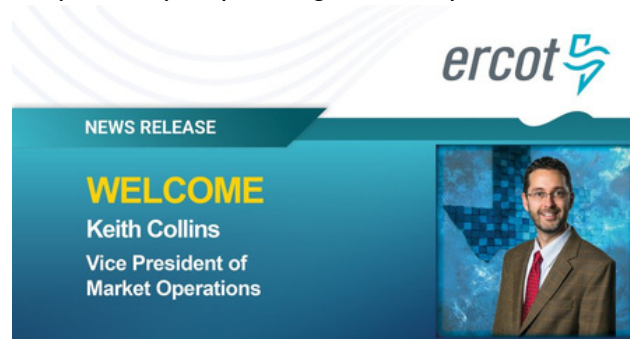
During their June 18th meeting, ERCOT's Board of Directors approved Nodal Protocol Revision Request (NPRR) 1224 with a \$750 price floor, as endorsed by ERCOT's Technical Advisory Committee (TAC).

As discussed in the May issue of the TCPA Times, this NPRR was initially suggested by the Independent Market Monitor and introduces a trigger that ERCOT may use to manually release ECRS from SCED-dispatchable Resources when the system shows consistent under-generation of at least 40 MW for ten consecutive minutes. NPRR1224 now heads to the PUC for the Commission's consideration.

## KEITH COLLINS JOINS ERCOT AS VP OF COMMERCIAL OPERATIONS

TPCA welcomes Keith Collins to Texas as the new Vice President of Commercial Operations for ERCOT effective June 17th. In his new role, Collins will focus on improvements to the rapidly evolving ERCOT market.

Collins joined ERCOT from the Southwest Power Pool (SPP), where he served as Vice President of their Market Monitoring Unit. Prior to his work with SPP, Collins served as Manager of Monitoring and Reporting for California Independent System Operator (CAISO) and Branch Chief for the Federal Energy Regulatory Commission (FERC). He has also worked for the New York Independent System Operator (NYISO) improving market performance and outcomes.



(Image courtesy of ERCOT)

## ERCOT BOARD CHAIR STEPS DOWN

ERCOT Board Chair Paul Foster stepped down from his position effective June 19th. He was subsequently appointed by Governor Greg Abbott to the ERCOT Board Selection Committee. Vice Chairman Bill Flores will serve as Chair until a new Chair is selected. TCPA thanks Chair Foster for his service to ERCOT and the State of Texas.

# LEGISLATIVE NEWS

## SENATE B&C COMMITTEE DISCUSSES ELECTRIC ISSUES

On June 12th, the Texas Senate Committee on Business & Commerce (B&C) met to discuss several interim charges related to ERCOT and the electric grid, including market design, transmission, and cryptocurrency mining.

Although many issues were discussed, the headline was that ERCOT President and CEO Pablo Vegas informed the Committee that ERCOT would need to increase capacity from roughly 85,000 MW to 150,000 MW by 2030 in order to meet new unanticipated demands coming onto the system, mainly from AI data centers and cryptocurrency mining growth.

Senator Nathan Johnson noted that ERCOT's revised projections have "huge policy implications, and every assumption we've made in the last four years is now called into question once again."

Lt. Governor Dan Patrick followed up the meeting with a tweet expressing his concern over the projected load growth and declared that the Senate would "need to take a close look at those two industries."

TCPA members will continue to closely follow these discussions and are actively considering plans to build nearly 10,000 MWs, including 8,800 MWs via the TEF, to help address load growth in ERCOT.

## HOUSE STATE AFFAIRS COMMITTEE DISCUSSES ERCOT & PUC

On June 10th, the Texas House Committee on State Affairs met to discuss an interim charge related to monitoring the agencies and programs under the Committee's jurisdiction, including ERCOT and the PUC, and oversee the implementation of relevant legislation passed by the 88th Legislature.

TCPA Executive Director Michele Richmond provided invited testimony at the House State Affairs hearing focusing on the positive work the Legislature has done over the last few sessions and the need to allow those policies to be fully implemented before making more changes.

Richmond also spoke to the importance of adopting a reliability standard as it will provide the roadmap for the goal ERCOT should try to achieve and how the grid should operate. She noted if the standard is being met, then the market and reliability will be properly aligned and functioning well. If not, that will indicate a need to adjust market design parameters or products to better align with reliability requirements.

# LEGISLATIVE NEWS

## CONTINUED

Richmond clarified that TCPA does not believe a reliability standard provides license to procure additional capacity in order to meet the standard nor does TCPA advocate that. It is critical that reliability be achieved through the competitive market because that provides solutions in the most efficient and cost-effective way which provides confidence for both suppliers and consumers.

## OTHER NEWS

### EPA'S "GOOD NEIGHBOR" PLAN TEMPORARILY BLOCKED

On June 27th, the Supreme Court of the United States prevented enforcement of the Environmental Protection Agency's (EPA) "Good Neighbor" plan while the rule's legality is contested in a lower court because the Court believed the petitioners are likely to ultimately prevail in their underlying legal challenge.

This decision came at the request of Ohio, Indiana, West Virginia, and various other stakeholders that sued the EPA in the U.S. Court of Appeals for the District of Columbia Circuit, arguing that the EPA violated a federal law aimed at ensuring agency actions are reasonable. The D.C. Circuit court refused to block the rule pending review, leading to the request that the Supreme Court intervene.

The rule would require Texas and 22 other states to cut emissions from power plants and other industrial sources. Those challenging the rule believe it could impose unreasonable costs and destabilize power grids. TCPA shares those concerns and will be monitoring the progress of the lawsuit.

### TEXAS SUPREME COURT CASE - PUC V. LUMINANT

On June 14th, the Texas Supreme Court issued their ruling in PUC v. Luminant Energy, a case stemming from the PUC's pricing orders during Winter Storm Uri in February 2021. The court reversed the judgment of the Austin Court of Appeals striking down the pricing orders and instead affirmed the pricing orders.

In summary, the Supreme Court held that the PUC's pricing orders did not exceed its authority under the Public Utility Regulatory Act (PURA) and that the PUC substantially complied with the Administrative Procedure Act's emergency rulemaking requirements.

## OTHER NEWS CONTINUED

### “CHEVRON DEFERENCE” OVERTURNED

On June 28th, the Supreme Court of the United States overturned Chevron v. Natural Resources Defense Council, a Supreme Court decision from 1984 that created one of the most important principals of administrative law, the “Chevron deference.” In that case, the Court sustained a Reagan-administration interpretation of the Clean Air Act that loosened regulation of emissions on the grounds that the Environmental Protection Agency’s reading of the statute was “a reasonable construction” that was “entitled to deference.”

Under the Chevron deference doctrine, when a legislative delegation to an administrative agency on a particular issue or question was not explicit, a court could not substitute its own interpretation of the statute for a reasonable interpretation made by the administrative agency. When the statute was silent or ambiguous with respect to the specific issue, the question for the court was whether the agency’s action was based on a permissible construction of the statute. Essentially, judicial deference was appropriate where the agency’s answer was not unreasonable, so long as Congress had not spoken directly to the precise issue at question.

Loper Bright Enterprises v. Raimondo, Chief Justice John Roberts in his opinion for the court explained that the Chevron deference is inconsistent with the Administrative Procedure Act (APA), a federal law setting out the procedures that federal agencies must follow and instructions for courts to review actions by those agencies. Roberts stated that the APA directs courts to “decide legal questions by applying their own judgment” and “it makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are not entitled to deference.” Roberts concluded, “Under the APA, it thus ‘remains the responsibility of the court to decide whether the law means what the agency says.’”

While the long-term impact of this decision is still unclear, the Chevron case has been relied upon in 70 Supreme Court decisions and roughly 18,000 lower court cases. There is the potential that at least some of the regulations at the heart of those decisions will be relitigated.

