**PROJECT NO. 57374**

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| **EXEMPTION PROCESS FOR ERCOT TECHNICAL STANDARDS** | **§**  **§**  **§** | **PUBLIC UTILITY COMMISSION**  **OF TEXAS** |

**TCPA COMMENTS ON PROPOSAL FOR PUBLICATION OF NEW 16 TAC §25.517**

Texas Competitive Power Advocates (TCPA) appreciates the opportunity to provide comments in response to Public Utility Commission of Texas (Commission) Staff’s questions regarding the Proposal for Publication of new 16 Tex. Admin. Code (TAC) § 25.517, relating to a process for seeking exemptions from ERCOT reliability requirements. Included as Attachment A to these comments is an Executive Summary of TCPA’s comments.

**INTRODUCTION**

As a general matter, TCPA supports the notion that all market participants should comply with all the same reliability requirements and that exceptions from those requirements should be granted only in circumstances that do not pose an unacceptable reliability risk to the grid. With that said, TCPA shares concerns raised at the February 10, 2025 Staff-led workshop about the adoption of retroactive requirements, which, without an exception, would require existing resources to replace or substantially modify as-built equipment to come into compliance, especially given the ever-changing landscape of the grid and reliability-related requirements. Existing resources have invested in the ERCOT market based on the rules that existed at the time, and thus, it is appropriate to consider the cost impact of changes to reliability requirements on existing resources and to carefully consider whether it is appropriate in the first instance to impose what amounts to retroactive requirements on existing resources.

Along those lines, as a first order priority, the Staff should evaluate and propose a more formal process (via a rulemaking) for stakeholders to raise concerns to the Commission about proposed Protocols or other rules that the ERCOT Board has recommended for Commission approval, over the stakeholders’ stated objections during the ERCOT process, before those Protocols or rules are approved by the Commission. If all stakeholders have a meaningful opportunity to present potential cost and other feasibility-related concerns about proposed new requirements before those requirements go into effect, then the Commission can evaluate those concerns before adopting the requirements in the first place, which would mitigate a need for widespread exceptions to those requirements.

With that said, TCPA understands that there may be circumstances where reliability of the grid requires the adoption of new requirements that not all as-built resources can meet without making potentially significant modifications to their resources, which may not be feasible from a purely technical or cost/availability of equipment perspective. TCPA thus supports the ability for market participants to be granted time-limited exemptions from requirements that ERCOT and the Commission have deemed necessary for reliability if such exceptions would not cause any unacceptable reliability risks or if those risks can be appropriately managed through curtailment or other mitigation actions.[[1]](#footnote-2) There are also non-reliability related circumstances (e.g., related to net metering) where exemptions are sometimes needed and are granted pursuant to an existing process at ERCOT (without a time limitation); the proposed rule should not capture those circumstances and should continue to allow use of the existing processes.

To address the concerns raised above, TCPA recommends changes to the proposed rule, further below, to more narrowly define the circumstances in which the exemption process in the rule will apply in the first place and in which ERCOT will be required to deny an exemption request. More specifically, TCPA recommends that the exemption process apply only to requests related to ERCOT requirements that address reliability risks, as opposed to all technical ERCOT requirements, and that the exemption request be denied only in situations presenting a truly “unacceptable reliability risk,” which TCPA contends should be defined much more narrowly than the current proposal and should not be deemed to exist if a curtailment or other mitigation scheme can satisfactorily manage the risk. TCPA’s answers to the questions, below, are predicated on the final rule including TCPA-recommended changes provided in the redlines of the proposed rule further down in these comments. Should the final rule not include those changes, then TCPA may have additional comments to prevent unintended consequences that could lessen reliability in the future.

**RESPONSE TO STAFF QUESTIONS**

1. *Should the concept of feasibility include a cost component?*
2. *How should the rule distinguish between ERCOT reliability requirements that should and should not allow for an exemption?*
3. *How should ERCOT evaluate cost in comparison to the reliability risk that an unmodified resource may pose to the grid?*

TCPA responds to Questions 1 to 3 together. TCPA’s primary recommendation is that the rule (if adopted)[[2]](#footnote-3) should be revised to properly define what is truly unacceptable in terms of endangering the grid or other resource owners’ equipment. If “unacceptable reliability risk” is defined in an appropriately narrow manner, then time-limited exemptions would generally be available to resources that are not able to meet new ERCOT requirements, either due to a purely technical infeasibility or because the necessary modifications to comply are cost-prohibitive. During the time any such exemption is in effect, the resource owner can evaluate whether it is able to spend the money needed to come into compliance by the expiration of that time or else retire the resource. With that said, if granting an exemption would truly endanger the grid or substantially damage another resource owner’s equipment, and it is not possible (technically or from a cost-perspective) to eliminate the unacceptable risk through some sort of mitigation, curtailment, or remedial action scheme, then the exemption should not be available, even if that means the resource may have to contemplate exiting the market. That circumstance, however, should be rare if the definition of unacceptable reliability risk is appropriately narrowed (and if stakeholders have a meaningful opportunity to raise compliance concerns about proposed new ERCOT requirements before those requirements are adopted by the Commission in the first place, such that fewer exemptions may be sought to begin with).

In order to make this work in practice, it is critical that the final rule narrowly define the circumstances in which the outcome is so serious that potentially forcing a resource into early retirement (i.e., if the resource cannot afford to make the necessary modifications to comply with the reliability requirement) would be warranted to protect the grid at large or to protect another resource owner from significant equipment damage. An example of such an outcome would be a resource’s likelihood of tripping offline and, as a result, creating a cascading out on the system. That circumstance would make denial of an exception rational and reasonable in that the exception puts other resources, components of the grid, and the overall system at catastrophic risk. Resources make economic decisions, and a modification that is too costly for a responsible resource owner to make would likely result in the decision to retire that resource. However, if a resource is in poor enough condition or old enough that making the modification is cost-prohibitive enough to force retirement and an exception puts aspects of the grid outside of the specific resource’s own equipment and functionality at an unacceptable level of risk, it is likely time for the resource to exit the market as its continued operation yields greater risk than benefit to the ERCOT system.

Defining “unacceptable reliability risk” with narrow specificity will appropriately balance cost considerations for existing resources to come into compliance with ever-changing reliability requirements, while protecting the remainder of the grid and other resource owners from undue reliability risk. A narrow and clear definition of “unacceptable reliability risk” will also cut down on the number of appeals on exemption decisions.

Further, if “unacceptable reliability risk” is defined appropriately, then it should be easier for ERCOT to determine which technical requirements are “reliability requirements” that will require the exemption process in the rule (because it will only be those that, if exempted, could even plausibly lead to one of the “unacceptable reliability risks” identified in the rule). With that said, there are certain requirements in the ERCOT rules that are plainly not related to reliability where exemptions are often sought (e.g., the 400-yard rule related to common switchyards), and, as discussed further below, those requirements should not be subjected to the formal exemption process in the rule. Exemptions from net metering requirements are handled pursuant to an existing process at ERCOT, and for practical reasons, those exemptions should not be time limited (as they would be if they are subjected to the process in the rule).

TCPA recommends edits to effectuate these recommendations further below.

1. *Under subsection (g)(1), an exemption is no longer valid if the market participant makes a modification covered by the ERCOT planning guide section relating to Generator Commissioning and Continuing Operations. Is this a reasonable threshold for considering a resource modified to the extent that it is no longer the same resource that was granted an exemption? If not, what is a reasonable threshold?*

TCPA believes it is a reasonable threshold for invalidating an exemption if the resource has been found to have materially modified their resource. If a change to the resource is significant enough to require going through the interconnection process again due to physical changes to the resource, then it is a modification substantial enough to warrant invalidating the exemption.

**RECOMMENDED CHANGES TO THE PROPOSED RULE ABD ACCOMPANYING COMMENTS**

**TCPA’s Recommended Changes to Rule Language:[[3]](#footnote-4)**

**§25.517. Exemption Process for ERCOT Reliability Requirements**

1. **Application.** This section applies to the Electric Reliability Council of Texas (ERCOT) and market participants in the ERCOT region that are required to comply with reliability requirements. Any exemption granted under this section applies only to a resource that existed before the date a reliability requirement takes effect and that satisfies the criteria for an exemption. This section does not apply to exemptions that pose no reliability risk. An unacceptable reliability risk described in subsection (b)(5) of this section applies only to the assessment of exemption requests and does not affect reliability criteria in the ERCOT protocols, operating guides, or other binding documents.

**Rationale in Support of Recommended Changes:**

The premise of the proposed rule changes is to ensure that existing exemptions processes at ERCOT for non-reliability related requirements continue to be available to market participants. The proposed exemption process in the rule, which is documentation-intensive and likely will require significant time and resources to get through, reasonably should not be applicable to exemptions without a reliability risk.

As noted above, one example of a requirement from which resources sometimes need to seek an exemption, but which is unrelated to reliability and thus should be exempt from the proposed rule, is the requirement that points of interconnection for co-located load and generation must be no greater than 400 yards apart to be eligible for net metering arrangements.[[4]](#footnote-5) The ERCOT Protocols set out an exemption process for metering requirements (including the referenced net metering requirement), which can be granted on a temporary or permanent basis, with ERCOT Board approval required if the exemption will be permanent.[[5]](#footnote-6) The 400-yard requirement is an example of a requirement that has economic implications for the resource owner, but no reliability impacts to the grid. Further, the exemption from that requirement is typically granted on a permanent basis, which would be called into question if the exemption had to be sought under the proposed rule process, which contemplates a time limitation on all exemptions (and imposes a limitation on how many times an exemption may be sought from the same requirement). Thus, non-reliability related requirements (such as metering requirements) should be exempted from the formal exemption process set out in the proposed rule.

**TCPA’s Recommended Rule Changes**:

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

(1) **Resource** -- includes a generation resource, load resource, and an energy storage resource, as defined in the ERCOT protocols.

(2) **Reliability requirement** -- a technical standard adopted by ERCOT to support the reliability of electric service, with which market participants must comply, that is included in the ERCOT protocols, operating guides, or other binding documents to support the reliability of electric service. This does not include metering arrangements.

(3) **Technical limitation** -- a technical restriction preventing a resource from complying with a reliability requirement, based on the resource’s documented technical infeasibility to comply with the reliability requirement.

(4) **Technically feasible** -- describes a modification or upgrade that~~, based on physics and engineering~~ is commercially available, economically viable, and can be made to a resource.

**Rationale in Support of Recommended Changes**:

TCPA proposes modifications to two definitions in the proposal to prevent a flood of exemption applications for common occurrences and to ensure practical issues are included in what is considered “technically feasible.”

First, as noted above, it is common for resource owners to seek exemptions related to net metering arrangements, and this exemption process is covered separately in ERCOT protocols, which allow for permanent exemptions. Subjecting these types of requirements to the proposed rule could necessitate a significant number of filings and trigger the detailed and potentially time-consuming process in the rule for no rational reason. Further, as noted, from a practical perspective, the proposed rule process (which contemplates a time limitation for exemptions) would not work for the types of exemptions that reasonably need to be granted on a permanent basis (such as net metering arrangements). Thus, TCPA recommends language to the definition of “reliability requirement” to specifically exclude those arrangements.

Second, a modification may be feasible in terms of physics and engineering – the science of the modification in terms of physical capability – but may still not be technically feasible from a cost or availability perspective. For example, a modification to a resource may not technically be feasible if there is a significant supply chain delay in accessing parts or components necessary to complete the modification. Similarly, if something is cost-prohibitive for a resource in terms that the resource would be uneconomic, it may not be technically feasible, and the resource may choose to initiate the suspension of operations process rather than make the modification. While the rule should still provide for ERCOT to deny an exemption request if it would pose a truly unacceptable reliability risk that cannot be eliminated or appropriately managed (even if the reason it cannot be eliminated relates to cost or availability or any other technical feasibility consideration), it still makes sense for the resource owner to provide ERCOT with all information related to technical feasibility, including with respect to cost and availability. That information would be valuable to ERCOT in evaluating whether to grant an exemption with conditions and what potential conditions are available. That information could also be considered by the Commission in evaluating an appeal of an ERCOT decision to deny an exemption request (or alternatively, the rule could be revised to provide for the ERCOT decision to be a recommendation only and for the final decision to be made by the Commission, such that cost considerations could more easily inform the analysis given the Commission’s role as the policmaker[[6]](#footnote-7)).

**TCPA’s Recommended Rule Changes**:

(5) **Unacceptable reliability risk** -- a risk posed to the ERCOT system~~, including~~ that would result in:

(A) instability, cascading outages, or uncontrolled separation; or

~~(B) loss of generation capacity equal to or greater than 500 megawatts in aggregate from one or more resources;~~

~~(C) loss of load equal to or greater than 300 megawatts;~~

(D) significant equipment damage to other resources~~; or~~

~~(E)~~ ~~an unknown or unverified limitation~~.

**Rationale in Support of Recommended Changes**:

The definition of “unacceptable reliability risk” should be more narrowly tailored to properly address a situation in which failure to modify the resource causes very specific catastrophic problems for the ERCOT system or significant equipment damage to other resources. Losses of generation capacity and load (i.e., subparts (B) and (C) in the proposed definition) are circumstances that can be and are managed by ERCOT, as the grid operator, in a controlled manner and do not necessarily threaten the reliability or stability of the grid. The thresholds for loss of generation capacity or load contained in the proposed rule are also arbitrary thresholds that are very low and are not necessarily indicative of a dangerous unacceptable reliability risk. An uncontrolled loss of load or generation that causes instability, cascading outages, or uncontrolled separation (i.e., subpart (A) of the proposed definition), on the other hand, is appropriate to include in the definition, because that is the type of reliability risk that cannot be mitigated and thus warrants a denial of an exemption. Similarly, if granting an exemption would create significant equipment damage to another resource (i.e., subpart (D)), then that is another circumstance where denial is warranted in order to protect the integrity of the other resources on the grid. An “unacceptable reliability risk” should be clear and widely understood across policymakers and market participants and be severe enough to warrant an exemption denial and the required capital expenditure to comply with the modification or to justify a risk so catastrophic that retirement would be preferable to exemption. The above redlines ensure that certainty as well as thread the needle between safety and cost.

**TCPA’s Recommended Rule Changes**:

(d) **ERCOT assessment of exemption requests.**

(1) **Assessment process**. ERCOT must assess the ERCOT system to determine whether an exemption granted to one resource or several similarly-situated resources that have requested an exemption would result in ~~adversely~~ ~~affect ERCOT system reliability, including whether~~ an unacceptable reliability risk ~~is~~ present in ERCOT’s assessment. The assessment may consider the estimated total cost of each modification, replacement, or upgrade included in an exemption request under subsection (c)(3) of this section and must consider the following:

(A) steady state and dynamic stability of the ERCOT system;

(B) resource and system performance under a reasonable set of operating conditions (e.g., peak summer, peak winter, high wind low load, and nighttime conditions);

(C) reasonable and expected topology, equipment status, and dispatch used in the assessment;

(D) any contingencies ERCOT deems critical based on engineering judgment, including contingencies from any applicable North American Electric Reliability Corporation reliability standard, including any allowed steady state system adjustments for contingencies, or from the ERCOT planning guide;

(E) any technical limitations described in the request that are not included in the models provided by the applicant under subsection (c)(5) of this section, the effect of which will be assessed by analyzing the expected impact based on ERCOT’s engineering judgment;

(F) ERCOT’s most recent outlook for resource adequacy;

(G) the potential impact of new resources in the interconnection queue on system reliability; and

(H) any other information ERCOT deems necessary to assess the reliability impact of an exemption based on ERCOT’s engineering judgment.

(2) **Assessment outcomes**. ERCOT may grant an exemption, grant an exemption with conditions, or deny an exemption.

(A) ERCOT ~~may~~ must grant an exemption if its assessment identifies no unacceptable reliability risks.

(B) ERCOT may grant an exemption with conditions (e.g., curtailment of the resource’s output under certain circumstances, a congestion management plan, or other remedial action) if implementation of those conditions would eliminate all unacceptable reliability risks.

(C) ERCOT must deny the exemption request if its assessment identifies an unacceptable reliability risk that cannot be eliminated or satisfactorily managed by imposing conditions, such as those listed in subparagraph (B) of this paragraph.

(D) ERCOT must provide a detailed written explanation with specific information to justify denying the exemption.

**Rationale in Support of Recommended Changes**:

TCPA recommends the above redlines to the introductory paragraph of this section to ensure that assessments are evaluating whether similarly-situated resources have requested an exemption and to tighten up the concerns to truly address reliability risk that is unacceptable (as opposed to simply “adverse”). Similar to the redlines for definitions, these changes would provide clarity to policymakers, regulators, and market participants and provide an apples-to-apples comparison during the assessment process. Further, by considering similarly-situated resources when determining impacts to reliability, ERCOT would ensure that all such resources would either receive or not receive the exemption based on the aggregate impact of their requests—in other words, if the aggregate impact of the exemption requests would present an unacceptable reliability risk and that risk cannot be managed satisfactorily through curtailment or other mitigation schemes, then none of the similarly-situated resources requesting that exemption should get the exemption. If, on the other hand, the risk would not be unacceptable, then the resources should all receive the exemption.

In subpart (C), TCPA recommends that an exemption be denied only if it would cause unacceptable reliability risk that cannot be either eliminated (i.e., the existing language in the proposed rule) or satisfactorily managed (which is new language proposed by TCPA). If the risk can be managed (e.g., through curtailment or a mitigation scheme of some sort), then it should not be deemed “unacceptable” and should not require denial of the exemption request.

With respect to the recommended addition of (D) (which would require ERCOT to provide a written reason for the denial of an exemption request), the intent of that change is to provide transparency and provide important information for the market participant and the Commission, particularly should the market participant appeal the exemption denial to the Commission (or alternatively if the rule is modified to provide for ERCOT to make a recommendation and the Commission to make the final decision). Additionally, TCPA recommends the Commission direct ERCOT to update protocols to provide a process for determining what information should be protected confidential information and what information should be made available to all stakeholders.

**TCPA’s Recommended Rule Changes**:

(e) **ERCOT inspections.** ERCOT may inspect resources to verify the need for an exemption or perform field verification of modeling parameters, using employees or ERCOT-designated contractors. ERCOT must provide the market participant at least ~~48 hours’~~ 3 business days’ prior notice of a field visit unless otherwise agreed by the market participant and ERCOT. A market participant must grant ERCOT employees or ERCOT-designated contractors access to its facility to conduct, oversee, or observe the inspection. ERCOT may require additional documentation from the resource or conduct its own verifications, as ERCOT deems necessary.

**Rationale in Support of Recommended Changes**:

TCPA recommends a required notice of 3 business days prior to an ERCOT inspection. The hourly notice in the proposed rule is not adequate, particularly if notice is provided late in the day preceding a holiday weekend with an expectation for inspection the morning that concludes the holiday weekend. The change to 3 business days is a practical solution that is also consistent with most industries’ notice requirements.

**TCPA’s Recommended Rule Changes**:

(g) **Revocation**.

(1) Any exemption is limited to the period identified by ERCOT, not to exceed two years unless the Commission finds good cause to extend the time, in granting the exemption under subsection (d)(2) of this section or the period in the commission’s order ruling on an exemption under §22.251 of this title. An exemption is no longer valid if the resource owner or operator makes a modification covered by the ERCOT planning guide section relating to Generator Commissioning and Continuing Operations. After such a modification, the resource must meet the latest reliability requirements in the ERCOT protocols, operating guides, and other binding documents.

(2) ERCOT may revoke an exemption it granted, or suspend an exemption granted by the commission, if a reliability study by ERCOT demonstrates that system conditions have materially changed since the exemption was granted. If ERCOT suspends an exemption granted by the commission, the commission will either ratify or set aside ERCOT’s action as soon as practicable.

(3) Nothing in this section reduces or otherwise adversely affects ERCOT’s authority to prudently operate the grid, regardless of whether a resource has been granted an exemption. The commission may initiate a review of an exemption on its own motion or in response to a filing by ERCOT.

**Rationale in Support of Recommended Changes**:

TCPA recommends a not-to-exceed timeframe for the exemptions to provide clarity and transparency. Two years is a reasonable timeframe to allow for supply chain or labor delays related to the required modification. The inclusion of a good cause exception from the two-year limit also provides flexibility for the Commission to evaluate any additional issues that occur on a case-by-case basis. The underlying purpose of these changes is to ensure that the rule balances the overarching fairness of requiring all resources to meet the same requirements and the need to protect the reliability of the grid with the very real cost considerations that can more significantly impact existing resources, which invested in the system based on the rules that existed at the time. In TCPA’s view, two years, with ability for case-by-case exceptions, strikes that balance.

Date: February 18, 2025

Respectfully submitted,

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**ATTACHMENT A: EXECUTIVE SUMMARY**

* As a general matter, TCPA believes that all resources should comply with the same reliability requirements, and exceptions should be granted only in circumstances that do not present an unacceptable reliability risk to the grid.
* With that said, TCPA also generally opposes retroactive requirements on existing resources, who have invested in the system based on the rules in place at the time and who could be forced into retiring a resource if the alternative is a modification or replacement of equipment that is cost prohibitive, not commercially available, or otherwise technically infeasible.
* To strike the appropriate balance between ensuring that the reliability of the grid is not put at an unacceptable risk and that existing resources are not forced into retirement due to practical or economic inability to come into compliance with ever-changing reliability requirements (which, itself, could negatively impact the reliability of the grid), TCPA makes two primary recommendations:
  + First, the Staff should propose a rule to formalize the process for stakeholders that participated in the ERCOT process, but were unsuccessful, to present concerns directly to the Commission before the Commission adopts a new Protocol or other rule recommended for approval by the ERCOT Board. The goal should be to reach broad consensus on the appropriate reliability requirements (including taking into account cost impacts) in the first instance, which should mitigate the need for widespread exemptions.
  + Second, the rule should more narrowly define what constitutes an “unacceptable reliability risk” to ensure that exemptions would generally be available to resources that cannot, due to cost, supply availability, or other technical feasibility, come into compliance with a new requirement, so long as the exemption would not put the grid at a catastrophic risk (i.e., cascading outages) or substantially damage another resource owner’s equipment or if any such risk could be satisfactorily managed through curtailment or other mitigation schemes. TCPA does generally support putting a time limitation on such exemptions, which TCPA suggests should be two years absent good cause for a longer time.
* In addition, certain requirements—such as net metering and other metering arrangements—have no impact on reliability and are subject to an existing (and more streamlined and potentially permanent) exemption process at ERCOT, which should continue to be available for those requirements. In other words, the new process proposed in the rule should not apply to requirements that are unrelated to reliability.
* TCPA makes other recommended changes to the rule language, including that the notice for an inspection should be 3 business days (rather than 72 hours) consistent with standard notice provisions and that ERCOT should provide the market participant with a detailed explanation and record supporting a denial of an exception.
* Alternatively, the Commission could consider not adopting the rule and instead allowing parties to continue to use existing exemption processes at ERCOT and use the appeals process in Procedural Rule 22.251 to complain to the Commission if needed. If the rule is retained, the Commission could consider having ERCOT make the initial recommendation on the exemption, but reserve the final decision for itself, so that cost and other policy considerations could more easily be taken into account in the proceeding.

1. TCPA notes that the existing substantive rules, 16 Tex. Admin. Code (TAC) § 25.503, already allow market participants to raise technical feasibility (and other good cause) in the context of a proceeding involving an allegation of non-compliance, and thus, the proposed rule may not be needed and may introduce unnecessary complexity and create more work for ERCOT, staff, and stakeholders. Further, market participants can already file a complaint under 16 TAC § 22.251 regarding ERCOT conduct, which could include unsuccessfully seeking an exception from ERCOT on an ERCOT requirement. [↑](#footnote-ref-2)
2. *Supra* note 2. [↑](#footnote-ref-3)
3. TCPA’s suggested edits are reflected with a single underline for proposed additions and a single strikethrough for proposed deletions, with the font in red for readability. [↑](#footnote-ref-4)
4. ERCOT Protocols 10.3.2.3(7). [↑](#footnote-ref-5)
5. ERCOT Protocols, Section 10.14 *et seq.* [↑](#footnote-ref-6)
6. Discussions at the February 10, 2025 workshop indicated that ERCOT may not be in a position to evaluate costs itself (or may not feel that is the appropriate role for ERCOT). Thus, it could make sense for the rule, if adopted, to provide for ERCOT to issue a recommendation to the Commission on an exemption request and for the Commission, considering all available information including cost, to make the final determination (rather than provide for a two-step process with ERCOT making the initial determination with no consideration of cost and the Commission getting involved only in an appeal proceeding). [↑](#footnote-ref-7)