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PROJECT NO. 48023

RULEMAKING TO ADDRESS THE §  
USE OF NON-TRADITIONAL §  
TECHNOLOGIES IN ELECTRIC §  
DELIVERY SERVICE §

PUBLIC UTILITY COMMISSION  
OF TEXAS

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TEXAS COMPETITIVE POWER ADVOCATES (TCPA) REPLY TO THE STAFF  
REQUEST FOR COMMENTS

Texas Competitive Power Advocates (TCPA) is a trade association representing power generation companies, wholesale power marketers, and retail electric providers 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 the development, operation, and management of power generation assets, the scheduling and marketing of power, the provision of energy management services and the sales of competitive electric service to consumers. TCPA members provide more than fifty percent (50%) of the total net operable electric generating capacity in ERCOT, representing billions of dollars of investment in the state, and employing thousands of Texans. TCPA appreciates the opportunity to provide comments and will address staff questions 2 and 7 below and reserves the right to provide additional information in future comments or workshops in the project.

I. Responses to Commission Questions

**2. Can a transmission and distribution utility (TDU) legally own a non-traditional technology device, including energy storage equipment and facilities, to support reliability on its system, without a specific exemption in the Public Utility Regulatory Act? If so, under what legal authority could a TDU own such a device?**

Under the current provisions in the Public Utility Regulatory Act (PURA), a TDU is prohibited from owning a non-traditional technology device, including energy storage equipment and facilities. There are multiple provisions in PURA as well as the Public Utility Commission's (PUC's or Commission's) electric substantive rules that address this issue in terms of TDU participation in the market in general, as well as the role of batteries in the restructured competitive market specifically. At its very core, allowing a TDU to own a non-traditional technology device

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would violate both the letter and spirit of the law conveyed in PURA §39.001, which mandates that “regulatory authorities...shall authorize or order competitive rather than regulatory methods to achieve the goals of this chapter to the greatest extent feasible and shall adopt rules and issue orders that are both practical and limited so as to impose the least impact on competition.” The Legislature, in its enactment of SB 7 (76<sup>th</sup> Regular Session), was explicit that electric utilities were to be divided, no later than January 1, 2002, into separate entities that were classified as a power generation company, a retail electric provider, and a transmission and distribution utility.<sup>1</sup> In fact, the very definitions preclude a TDU from owning energy storage equipment and facilities by defining a “power generation company” as follows:

*“Power generation company” means a person, including a person who owns or operates a distributed natural gas generation facility, that:*

- (A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which Subchapter E, Chapter 35 applies;*
- (B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of “electric utility” under this section; and*
- (C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.<sup>2</sup>*

A separate definition for “transmission and distribution utility” makes it clear that the Legislature does not contemplate such an entity *owning* generation or generation facilities with the words “...that owns or operates for compensation in this state equipment or facilities *to transmit or distribute electricity*, except for facilities *necessary to interconnect a generation facility with the transmission or distribution network...*”<sup>3</sup> and such distinctions are made throughout the PURA as previously integrated utilities were directed to unbundle and provisions were made for the competitive generation and retail businesses as compared with the regulated transmission and distribution businesses.

As new technologies were brought to market, the Legislature further clarified its intent that TDUs not own energy storage devices or facilities with the enactment of SB 943 in 2011. That bill

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<sup>1</sup> PURA 39.051(b)  
<sup>2</sup> PURA 31.002 (10)  
<sup>3</sup> PURA 31.002 (19)

created PURA §§ 35.151 and 35.152, which classify electric energy storage equipment or facilities that put or take electricity from the bulk power system as generation and requires that an owner of such assets register as a power generation company. At that time, the one facility owned by a regulated utility, ETT, was grandfathered from the new provisions as part of PURA §35.152(c). The sum of these actions makes it abundantly clear that, absent a specific statutory exemption from these sections, there is no circumstance in which a TDU may legally own an energy storage device or facility.

Since the Commission derives its rulemaking authority from the Legislature and there is no provision of SB 943 or any subsequently enacted legislation that provides the Commission authority to promulgate an exception to this law, TCPA does not believe that any legal authority currently exists that would allow such an exception to be ordered or established by rule.

**7. If the commission were to adopt a policy of permitting a TDU to procure a non-traditional technology device for the purposes of supporting reliability on the TDU's transmission or distribution system, what potential effects would such a policy have on ERCOT wholesale market outcomes, and especially price formation, in the ERCOT market? What potential effects might such a policy have on the competitive retail market, if any?**

Without a statutory change to permit adoption of such a policy, TCPA believes any such Commission policy directive to permit direct ownership or operation of a non-traditional technology device would be in direct conflict with the provisions of PURA discussed in response to Question 2 above that prohibit TDU ownership of such technology. Regardless, such a departure from the restructured construct currently in place would have significant negative effects on both the ERCOT wholesale and competitive retail markets.

Allowing TDUs to procure non-traditional technologies, for reliability or any other purpose, would exacerbate current price formation issues by allowing generation owned by regulated entities to be released onto the grid at times of scarcity, further suppressing wholesale prices. First, allowing a rate-regulated utility to participate in the competitive market provides an unfair advantage over true generation companies that do not enjoy the benefit of a guaranteed return and the ability to recover the cost of their investment from captive ratepayers. At its core, entities that receive market-based compensation would be forced to compete with entities compensated for their capital investment through Commission-approved tariff rates. Currently,

TDUs may engage in the market only to *purchase* electricity for their own use, not to generate, sell, or resell.<sup>4</sup> It is unclear who would pay for the electricity a TDU would purchase – presumably its captive ratepayers – but the purchase outside of a normal market transaction distorts competitive market forces from the outset.

In contrast to this scenario, generation resources in ERCOT’s energy-only market cannot recover their costs from a captive customer base but instead must risk both return of and return on invested capital through the energy clearing prices in the wholesale market. Since a TDU-owned storage facility could discharge its stored energy onto the grid at any time, this influx of energy would be placed on the grid outside of the normal Security Constrained Economic Dispatch (SCED) through which all generation resources are currently deployed. As a result, the TDU-owned energy storage would suppress market prices by excluding it from the normal process that contributes to price formation through scarcity signals. This concept was discussed in AEP Texas’s case seeking approval to install lithium-ion batteries on its distribution system:

*Only generation that is dispatched by SCED has an associated offer that contributes to price formation. Critically, because ERCOT would not be dispatching generation to serve the Paint Rock load through SCED, the battery’s deployed generation would offset generation that would otherwise be deployed by SCED and would suppress the market clearing price.<sup>5</sup>*

ERCOT’s energy-only market depends on scarcity price signals to signal retirement needs as well as optimal time for new generation development. TDU ownership of energy storage through its rate-regulated construct would violate the statutory relegation of TDU activities to the natural monopoly of poles and wires, and directly interfere with the price signal that competitive market participants rely upon. Just as federal subsidies for intermittent renewable resources have suppressed market signals,<sup>6</sup> this rate-based subsidized generation would exacerbate price suppression. As discussed by Luminant/TXU Energy witness Amanda Frazier in the AEP Texas contested case regarding AEP’s proposed installation of battery facilities on its distribution system:

*AEP proposes to take electric energy from the interconnected grid to charge a battery and then discharge electric energy onto the grid from the battery during peak load conditions*

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<sup>4</sup> PURA §39.105(a)

<sup>5</sup> Docket No. 46368, Direct Testimony of Amanda J. Frazier, Luminant/TXU Energy at 8:23-28.

<sup>6</sup> Texas Competitive Power Advocates (TCPA) Comments on the Questions Regarding the Commission’s Review of Summer 2018 ERCOT Market Performance filed in PUC Project 48551 on October 18, 2018.

*when load exceeds the capacity, of the substation transformer that serves the area. This proposal is tantamount to peak-shaving and will result in the distortion of competitive market signals. Specifically, when AEP proposes to deploy the Paint Rock battery, ERCOT would no longer need to dispatch telemetered generation resources to serve that load through Security Constrained Economic- Dispatch (SCED). Only generation that is dispatched by SCED has an associated offer that contributes to price formation. Critically, because ERCOT would not be dispatching generation to serve the Paint Rock load through SCED, the battery's deployed generation would offset generation that would otherwise be deployed by SCED and would suppress the market clearing price. ERCOT is an "energy-only" market, wherein generation resources must recover all of their costs through the energy clearing prices set in the wholesale market. Typically, generators offer near their short-run marginal costs (i.e., fuel costs) such that most of the time, they are not recovering long-run marginal or fixed costs, much less a return of and on capital. Therefore, generators rely on higher prices during peak load events (scarcity prices) to make them whole. Moreover, the market depends on scarcity pricing signals to indicate when reserve margins are inadequate and additional generation resources should be developed.*

*When additional generation is added to the system outside of SCED, as AEP is proposing to do with the Paint Rock battery, it reduces the price from what it would otherwise be and skews scarcity pricing signals. As such, AEP's Paint Rock battery deployment would directly and negatively interfere with the price signal mechanism that generators rely on. Further, because AEP's intended use for the Paint Rock battery would be to deploy during peak load conditions, that interference with wholesale price formation would come at one of the most critical times for generators, when peak prices directly reflect the value of operating reserves and the risk of resource inadequacy across the ERCOT system.<sup>7</sup>*

AEP essentially made a proposal to reregulate a portion of the market, with the justification that there would purportedly be significant cost savings. This temptation to reregulate, because the regulated outcome might appear less costly in some particular case, will always be present. The benefits to deregulated outcomes are widely dispersed and captured over time through the inexorable forces of competition. This faith in the benefits of competition is a fundamental public interest provision of PURA, and the Commission was right to reject AEP's request.

In addition to negative impacts on the wholesale market, the competitive retail market would be adversely affected if TDUs are permitted to own energy storage devices or facilities. Retail prices charged to end-use customers are comprised of the competitive energy charge as well as the rate-regulated TDU delivery charges. By allowing a TDU to own an energy storage device

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<sup>7</sup> Docket No. 46368, Direct Testimony of Amanda J. Frazier, Luminant/TXU Energy at 8-9.

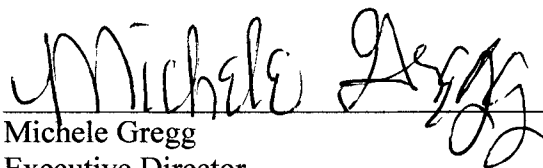
or facility, recovering those costs in its rate base, the increasing delivery charges customers are experiencing will continue to climb. Generation was intended, as discussed earlier, to be a competitive resource and subject to market price fluctuations; however, that would not be the case for TDU-owned generation resources as the price would be set by the Commission in the TDU tariffs and subsidized through end-use customer's bills. Over the last 16 years, the regulated component of customer bills has increased significantly. This harms the competitive retail market by minimizing the portion of an electric bill the customer can compete away through shopping different retail plans in their service territory.

## II. Conclusion

The Legislature was clear throughout SB 7, enacted in 1999, when it restructured the electric market in ERCOT that generation resources were to be part of the competitive market construct, thus prohibiting rate-regulated TDUs from owning such resources. As new non-traditional technologies became more technically and economically viable (namely energy storage), the Legislature in 2011 further solidified its desire for generation resources to remain in the competitive market space by defining these devices and facilities as generation resources and providing that TDU ownership of such a device or facility was prohibited absent a statutory exemption. Therefore, the law is abundantly clear that TDUs cannot legally own energy storage devices or facilities without first obtaining an exemption in PURA.

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Respectfully submitted,



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