Control Number: 48023

Item Number: 47

Addendum StartPage: 0
Texas Advanced Energy Business Alliance (TAEBA) hereby submits these reply comments regarding the Commission's questions in the above-referenced proceeding. It is clear from the initial comments that many parties agree that more transparency is needed in distribution system planning, and to that end, we offer additional suggestions for what such a process might look like. There is also a lot of support by the commenting parties for allowing utilities to enter into contracts for non-wires alternatives (NWA) services with competitive providers in lieu of utility infrastructure investment, although a few parties express concerns. We address these topics in more detail below.

**Parties Agree That a More Transparent Distribution Planning Process is Needed**

In TAEBA's Initial Comments, we laid out a three-tiered framework for considering non-traditional technologies. To recap, TAEBA proposed that the Commission use the following three-tier framework for considering where policy changes are needed to protect customers, foster competition, and remove market barriers to advanced energy in Texas electricity markets:

- **Tier 1:** First, the Commission should look to the competitive market to provide a solution to a system problem and should take all policy actions necessary to ensure that competition and customer choice come first.
- **Tier 2:** If the competitive market (Tier 1) is not providing a solution and the utility must address a system problem, then the utility should consider non-wires

---

1 TAEBA at 3-8.
alternatives (NWAs) through a competitive solicitation process, and should be allowed to earn a return on the contract for NWAs to put those service-based options on equal regulatory footing with traditional infrastructure build-out. The Commission should align regulatory incentives to promote NWAs in lieu of utility infrastructure build-out.

- Tier 3: If the market fails to deliver a solution (Tier 1) and there is no NWA option that provides a better value solution to address a system problem (Tier 2), then the Commission should have the administrative flexibility to direct a utility to propose, as a last resort, the addition of physical assets, including those using “non-traditional technologies.”

We will continue to discuss issues throughout these Reply Comments in the context of this proposed three-tier framework.

In our Initial Comments, we discussed the need for a more transparent distribution planning process (part of Tier 1 of the framework) to promote greater competition in markets by providing customers and other market participants with critical information regarding where competitive investments are needed. Numerous other parties also commented on the lack of information regarding ERCOT distribution systems. For example, both Affiliated Engineers, Inc. (AEI) and South-Central Partnership for Energy Efficiency as a Resource (SPEER) state that utilities should provide transparent planning to allow consideration of non-traditional technologies. Open Energy Efficiency (OpenEE) stated that: “What is most needed is a transparent process for distribution system planning.” Pattern Energy Group (Pattern) noted that distribution systems “remain largely opaque to everyone outside the distribution service providers which hinders the ability of RSPs to apply their analytical power and project concepts to distribution system challenges across the state.” Public Citizen expressed a similar sentiment, noting further

---

2 Non-ERCOT utilities should also consider targeted incentive programs such as demand response, or other DER incentives.
3 TAEBA at 14.
4 AEI at 3, SPEER at 4, 5.
5 OpenEE at 4.
6 Pattern at 8.
that distribution planning in ERCOT is not subject to the same oversight as transmission planning. The Solar Energy Industries Association (SEIA) and Texas Solar Power Association (TSPA) state that information is not always publicly available to inform where solar resources should locate to be most beneficial to the system. Environmental Defense Fund (EDF) states that "there must be increased transparency into the reliability issues that the utility seeks to address." The Texas Electric Transportation Resources Alliance (TxETRA) noted that lack of transparency is "a major impediment" to ensuring that EV charging equipment locates at the best sites. NRG Energy, Inc. (NRG) noted that additional information that could be provided by utilities would help direct private investment to the proper locations to resolve reliability issues. ERCOT stated that it has only limited information regarding distribution level resources. Finally, the Wind Coalition also asked the Commission to provide more transparency into utility distribution planning.

Transparent utility distribution system planning is critical for integration of distributed energy resources (DERs), as the competitive market continues to develop and customers continue to become more engaged by investing in DERs and by becoming more active market participants. As Entergy Texas states in its initial comments, "Technological advancements and increased adoption of distributed energy resources ("DERs") will require more functionality and flexibility from distribution infrastructure than currently exists." TAEBA agrees. As utilities evaluate investments that will provide that functionality and flexibility, a transparent distribution planning process will provide more insight into anticipated DER growth, help identify opportunities for DERs to offset or defer utility infrastructure investment, and establish criteria that could allow DERs to contribute more actively to distribution system reliability. Consistent with the three-tiered framework

---

7 Public Citizen at 15.  
8 SEIA and TSPA at 2.  
9 EDF at 1-2  
10 TxETRA at 14.  
11 NRG at 2.  
12 ERCOT at 3.  
13 Wind Coalition at 2.  
14 Entergy at 1.
set forth by TAEBA in our Initial Comments, establishing greater transparency for distribution planning will enhance the opportunity for Tier 1 (most preferred) solutions to reliability issues on the system, while also providing a procedural mechanism to identify where Tier 2 solutions (contracts for services in lieu of infrastructure build-out) are appropriate. To elaborate further on what such a process could look like, TAEBA recommends the following steps be undertaken in establishing more transparent utility system planning:\(^{15}\)

1. **Identifying Distribution System Capabilities, Needs, and Constraints.** Utilities should identify and communicate the hosting capacity on different parts on the system, identifying where adding certain types of DER would be most beneficial to the system, and increasing access to certain types of non-sensitive system information, where appropriate, to enable non-utility stakeholders, including customers and third-party DER providers, to support grid needs.

2. **Providing Load Growth Forecasts, DER Forecasts and Scenario Analysis.** Forecasting is evolving to include more granular projections of DER potential and likely customer adoption and should include robust scenario analysis and probabilistic planning of DER penetration to ensure a thorough understanding of future risks and opportunities.

3. **Reduce Barriers to Integration of DERs.** To more fully integrate DERs, stakeholders should identify opportunities to standardize and streamline interconnection processes, develop and implement interoperability standards, and identify potential investments to maintain and enhance the reliability and flexibility of the grid.

4. **Developing a Framework to Evaluate Non-Wires Alternatives.** Processes should be developed to properly value and source DER services, whether through Tier 1 competitive market solutions or through Tier 2 NWA contracts for services.

As we noted in our Initial Comments, other states are also looking at how to improve distribution system planning processes.\(^ {16}\) Of course, any process developed for TDUs located within the ERCOT region should take into account the unique characteristics of our competitive market structure — and the three-tiered “lens” through

\(^{15}\) These steps are adapted from Advanced Energy Economy’s recently published issue brief: “Distribution System Planning: Proactively Planning for More Distributed Assets at the Grid Edge,” June 29, 2018. [https://info.aee.net/21ces-issue-briefs](https://info.aee.net/21ces-issue-briefs)

\(^{16}\) TAEBA Comments at 6.
which we continue to urge the Commission to consider these issues. Distribution system planning processes for non-ERCOT utilities may be implemented with some differences, but the general principles remain the same.

**Parties Support Competitive Contracts for Non-Wires Alternatives (NWAs), and TAEBA Encourages the Commission to Remove Barriers to Contract-based Solutions Rather than Erecting New Ones**

Numerous parties filed initial comments in support of utilities entering into contracts for services in lieu of utilities investing in infrastructure buildout, and parties generally agreed that NWA contracts are consistent with the existing competitive market construct. For example, Advanced Energy Management Alliance (AEMA) asks the Commission to adopt a rule requiring TDUs to evaluate whether an NWA can address T&D needs and if so, for the TDU to incentivize such solutions in a targeted manner or conduct competitive solicitations for NWAs.\(^\text{17}\) OpenEE states that NWAs “fit beautifully within the competitive market construct in Texas.”\(^\text{18}\) The Office of Public Utility Counsel (OPUC) states that: “The Commission should require a TDU in ERCOT to contract with a non-utility service provider in the market to provide a generation technology device or a temporary load management program if the TDU believes it is needed for reliability.”\(^\text{19}\) Both Pattern Energy Group and the Wind Coalition suggested that utilities should enter into reliability services contracts.\(^\text{20}\) Public Citizen states that “the Commission’s rules should explicitly permit and clarify that TDUs may seek contractual solutions with non-utility service providers...prior to proposing to own and operate non-traditional technologies.”\(^\text{21}\) Sierra Club supports third-party contracts for NWAs, with shared savings to encourage the use of such contracts.\(^\text{22}\) TxETRA says: “We support the use of rate-based contracts to provide reliability services.”\(^\text{23}\)

---

\(^\text{17}\) AEMA Texas at 2  
\(^\text{18}\) OpenEE at 2.  
\(^\text{19}\) OPUC at 11.  
\(^\text{20}\) Wind Coalition at 3.  
\(^\text{21}\) Public Citizen at 9.  
\(^\text{22}\) Sierra Club at 2.  
\(^\text{23}\) TxETRA at 14.
"contract with a competitive provider for specific, defined reliability services provided by a non-wires technology."\(^{24}\) Vistra states that a contracts-for-services approach is "consistent with the long-standing policy of this state."\(^{25}\) Finally, additional parties supporting NWA contracts include AEI, Brasovan, EDF, NextEra, SPEER, SPS, SEIA and TSPA, Texas-New Mexico Power Company, and Tesla.\(^{26}\)

Only a few commenters lean toward opposing service contracts with competitive providers altogether.\(^{27}\) Alliance for Retail Markets (ARM), for example, acknowledges that procurement of reliability contracts is not prohibited by statute, yet cautions that the Commission must carefully consider how to establish such a process so it will not distort competitive markets.\(^{28}\) NRG asserts that a service contract for NWAs is "an end run around utility ownership"\(^{29}\) while Texas Energy Association for Marketers (TEAM) suggests there is essentially no difference between ownership by a utility versus entering into a contract for services with a competitive entity.\(^{30}\)

In the context of the three-tiered framework we laid out in our Initial Comments, these arguments are the equivalent of relying solely on Tier 1 to solve all reliability problems on the system, with a presumption that if the Tier 1 approach does not work, then the only other option is to revert to a traditional utility investment. TAEBA appreciates the general philosophical approach associated with wanting the (Tier 1) competitive market to solve all problems, and we agree with NRG that if there are additional reliability needs that could be addressed through creation of new markets, then such markets should be created.\(^{31}\) Nevertheless, not all T&D reliability issues can be solved with Tier 1 solutions. "Perfect competition" does not exist in practice, and even if the Commission were to do everything in its power to facilitate markets and customer empowerment, Tier 2 solutions will be necessary, and potentially, in rare circumstances, the least desirable.

\(^{24}\) TIEC at 4.
\(^{25}\) Vistra at 3.
\(^{26}\) AEI at 2-3, Brasovan at 2-5, EDF at 4-5, NextEra at 3, SPEER at 5, SEIA and TSPA at 5, SPS at 5, TNMP at 4, Tesla at 5-6.
\(^{27}\) NRG at 5.
\(^{28}\) ARM at 7.
\(^{29}\) NRG at 5.
\(^{30}\) TEAM at 3.
\(^{31}\) Ibid.
Tier 3 options may be as well. In particular, it may be relatively more difficult to establish truly open and competitive markets for reliability solutions at the distribution system level. Thus, if Tier 2 solutions, and even limited Tier 3 solutions, can solve reliability issues at lower costs to customers than traditional utility T&D investments, they should be considered.

A few parties, such as Vistra, NRG, and Apex CAES, suggest that contracts for competitive services entered into by a utility with a competitive provider for reliability services would constitute a subsidy to a competitive market participant. This argument should be rejected by the Commission. First, as TIEC notes, "If the TDU is contracting for a non-traditional technology as an alternative to a function traditionally served by wires facilities, then there should be no unique impact on wholesale market outcomes or price formation." Additionally, in the context of the three-tiered framework laid out in TAEBA's Initial Comments, we arrive at the Tier 2 solution to enter into a contract for NWA services because the competitive market on its own (Tier 1) is not providing a solution. In that instance, the utility would engage in a competitive solicitation, in which anyone who can provide the service can compete for that business. Competitive providers of services should be able to compete for additional streams of revenue if they are capable of providing the relevant services. Revenue for the service provided is not a competitive market "subsidy" but rather it is a payment for T&D reliability service obtained through competitive means, analogous to ERCOT contracting for ancillary services from competitive providers in the wholesale markets.

In contrast, a subsidy is, by definition, direct pecuniary aid by a government entity for a private undertaking. By way of example, we note that Vistra's subsidiary, competitive generation company Luminant, has won a $1 million grant from the Texas Commission on Environmental Quality to build a 10 MW storage project adjacent to Luminant's Upton 2 solar facility in west Texas. This is a subsidy. Of course, there are

---

32 Vistra at 2, NRG at 5, and APEX CAES at 4.
33 TIEC at 6.
34 https://www.dictionary.com/browse/subsidy
35 https://www.dallasnews.com/business/energy/2018/10/31/texas-paying-irving-luminant-1-million-install-battery-can-power-50000-homes
legitimate public policy reasons that governmental entities grant subsidies; in this case, the funding is in support of TCEQ’s policy objectives related to emissions reductions. Regardless of whether competitive providers are able to access additional revenue streams in support of competitive ventures, with respect to ratepayers who must pay for T&D utility investments, the alternatives once the utility is at Tier 2 are for the problem to be solved either with an NWA or through more expensive investments in traditional infrastructure. Either way, utility ratepayers will pay for the solution to the T&D reliability problem, but with the NWA, it would be a less expensive solution to the benefit of ratepayers, and would be obtained through a competitive process, disciplining prices and meeting the competitive market objectives of the ERCOT market design.

A few parties also suggest that any NWAs should be subject to a Commission pre-approval process. This argument, too, is flawed. First, requiring pre-approval erects new regulatory barriers for utilities to enter into contracts to obtain new, competitively priced, advanced technology solutions. The Commission should seek to remove barriers rather than creating new ones. Specifically, the Commission should clarify regulatory treatment and align incentives to ensure that NWA contracts are on the same regulatory footing as infrastructure buildout, the latter of which does not require any pre-approval. If it becomes even more onerous for a utility to enter into a contract for reliability services than it already is today, then the utility is further incentivized to pursue the less efficient, more expensive solutions. If the traditional infrastructure solution is the default solution and utilities are effectively thwarted from entering into contracts for the less expensive NWA option, then ratepayers will be substantially worse off. For these reasons, the Commission should not require a pre-approval process. Rather, any NWA contract should be subject to the standard regulatory tests in a subsequent rate case, just like traditional wires investments. If the Commission finds that such expenditures were not prudent, then they can deny rate recovery. Further, if the Commission institutes a transparent planning process consistent with our prior comments on that topic, then that process provides a regulatory “check” on actions undertaken by the utility, whether for traditional investments or NWA services.

36 OPUC at 8, Vistra at 3.
Utilities Prefer to Own Assets Themselves, but the Commission Can Align Incentives to Put Contracts on the Same Level Playing Field

Much of the focus in the initial comments is on whether ERCOT TDUs should be able to own non-traditional assets, and as we stated in our Initial Comments, we agree that ERCOT utilities generally should not be allowed to own such assets unless the market has been given every opportunity to provide a competitive solution, but such a solution has not materialized (creating the need for a Tier 3 solution under our framework). For non-ERCOT utilities, though, there should be no debate about this question; they can own these assets, just as they can own generation. Nevertheless, just because they can own these assets does not mean that they should. Utilities generally prefer ownership of assets, which is not surprising, given that long-standing regulatory models incentivize owning assets rather than contracting for services. As we have discussed previously, the Commission can and should clarify regulatory treatment of service contracts that defer or avoid utility capital investments to make a utility financially neutral with respect to whether to invest in infrastructure or contract for a service.

Oncor expresses concern that lack of performance by a contracted third-party cannot be enforced in the same manner that failure of a market participant to provide ancillary services can be enforced in the wholesale market. To the contrary, such matters can be addressed in the contracts entered into with third parties. As Oncor notes, the Commission could establish standard contract requirements through a rulemaking to address any concerns about performance. Other commenters offer additional suggestions on addressing liability contractually, including potentially requiring registration with ERCOT as a condition of the contract.

37 AEP Texas and ETT at 10, CenterPoint at 12.
38 Oncor at 10.
39 Oncor at 11.
40 Public Citizen at 12.
Conclusion

The initial comments filed in this project show substantial support for encouraging utilities to contract for services from non-traditional technologies. We urge the Commission to move forward to clarify how it will treat contracts for NWAs, including modifying its rules as necessary to align incentives in such a way as to ensure that a utility’s ability to contract for services is put on the same regulatory footing as investment in traditional “poles and wires.” We also urge the Commission to take all actions to ensure that competitive outcomes are promoted, including establishing a transparent distribution planning process for both ERCOT and non-ERCOT utilities, and ensuring that if there are additional markets that can be created for reliability services that they are indeed created. We look forward to continuing to move this project forward to develop rules consistent with our comments.

Respectfully submitted,

Suzanne L. Bertin
Executive Director
Texas Advanced Energy Business Alliance
P.O. Box 301151
Austin, Texas 78703
suzanne.bertin@texasadvancedenergy.org
512.739.4678