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PROJECT NO. 51840

RULEMAKING TO ESTABLISH
ELECTRIC WEATHERIZATION
STANDARDS

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PUBLIC UTILITY COMMISSION

OF TEXAS

EXECUTIVE SUMMARY OF TCPA COMMENTS ON PROPOSED
WEATHERIZATION RULE

- Seasonally mothballed resources should be exempted from the application of the rule.
- Filings required under the rule should be under confidentiality, without public access, since proprietary information as well as potential vulnerabilities of critical electric infrastructure will be contained.
- Inspection program and winter weather preparedness forms are critical to implementation and compliance and must be subject to public review, input and final Commission approval.
- Fuel security is a separate issue from weatherization that should be addressed in the context of market design reforms and new product offerings. Company decisions on how to address fuel security are based on whether the market supports such investment and are not a component of weatherization.
- Preparedness for winter weather may include creating and making an inventory of resources needed but not necessarily installing them and should be flexible to allow resources to take the operationally practical and relevant action.
- Testing freezing components cannot be accomplished outside of winter and should be specific in what is being tested – power to the component or some other data-driven outcome.
- Older resources may have changed ownership over the years and may not have design documents available. Resources should have requirements related to minimum design temperature, historical minimum operating temperature, OR other observed operating limits which would maintain consistency with the NERC requirements.
- The officer attesting to the completion of weatherization activities should be the highest ranking person with direct knowledge and oversight of operations. This person, who may

not be the chief executive officer, can speak to what has been done and how it impacts operations.

- TCPA member companies would like a better understanding of the compliance report spreadsheet and an opportunity to provide feedback on the proposed format to ensure information is communicated to the Commission clearly and completely and that nothing is lost in translation.
- Resource owners should have an opportunity to appeal an ERCOT determination and to cure identified deficiencies. The cure period should be tolled while an entity is appealing a determination or while the entity is following the process in rules to mothball or retire a resources.
- Good cause exception is important, particularly since resource owners lack control of contractors' schedules, contracting company COVID protocols, and supply chain issues. The exception recognizes the short compliance timeframe and the reality that resource owners face in completing work that requires the use of outside experts.
- TCPA supports the proposed exemption, for the 2021 calendar year, to submit the Declaration of Completion of Generation Resource Winter Weatherization Preparations. This commonsense approach reduces administrative burdens for generation resources and ERCOT.
- February 2021 issues were caused by a loss of generation output, not small derates. These same issues also caused an inability to restart units. Maintenance outages and derates are not weather-related but are necessary to maintaining the generation fleet. Anything weather-related would be a forced outage, but not every forced outage is weather-related.

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

TCPA COMMENTS ON PROPOSAL FOR PUBLICATION FOR NEW 16 TAC §25.55

Texas Competitive Power Advocates (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 members¹ 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 provide nearly ninety percent (90%) of the non-wind 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 on the proposal for publication approved by the Commission on August 26, 2021. Overall, the proposal's focus on implementing the best practices coming out of the 2011 winter storm and addressing issues from 2021 is a reasonable approach. TCPA has suggestions that will be discussed below by section of the proposed rule to better align with provisions in SB 3 relating to accountability and realities resource owners must address in their work plans. Similarly, TCPA makes some recommendations to ensure resource entities have a keen understanding of and input on the various requirements and components for which they will face scrutiny, and ultimately accountability.

A general comment that will also be addressed with recommended redlines in the proposed rule language below relates to the process used for developing details of the inspections as well as forms to be used to indicate winter weather readiness. The proposal for publication does not appear

¹ TCPA member companies participating in these comments include: Calpine, Cogentrix, EDF Trading North America, Exelon, Luminant, NRG, Shell Energy North America, Talen Energy, Tenaska, TexGen Power, and WattBridge.

to contemplate any stakeholder input regarding inspections or winter weather readiness reports which is a substantial departure from implementation processes and procedures throughout the tenure of the competitive electric market. Stakeholder input has been a source of specific expertise that is often only gained through the on-the-job experience of the specific industry segment and is not possible to obtain through regulatory work either at the Commission, at ERCOT or through another non-operational position in the industry.

The purpose has been to ensure implementation meets the practical and operational needs as well as that no unintended consequences are left unexamined. Typically, proposed forms are attached to draft rules. The exclusion of stakeholders' input, and instead relying on "ERCOT in consultation with commission staff,"² while potentially expedient, may yield sub-optimal and incomplete review of and lack of clarity on the information to be reported both via inspections and in the winter weather preparedness report.

TCPA recognizes the short time-frame associated with implementation; however, exclusion of any detail on the inspection plan or on the winter readiness form in the proposal for publication greatly hampers public input on key implementation aspects regarding weatherization. TCPA recommends the Commission address this deficiency by soliciting comments or holding a work session to seek input on a proposed form and inspection plan to ensure Commission approval of those details by November 1. This will help entities know the expectations with which they are to be compliant on December 1. Another alternative is for the Commission to hold a public hearing in September with the referenced form and inspection program details available for public review and input. Either way, TCPA believes Commission approval following public input on the form and inspection program to be critical to proper implementation and compliance.

SECTION BY SECTION REDLINES AND COMMENTS

Application, Confidentiality and Definitions

§25.55. Weather Emergency Preparedness.

² Proposed §25.55(b)(5) and 25.55(c)(2), Project 51840 Proposal for Publication, August 26, 2021.

(a) **Application.** This section applies to the Electric Reliability Council of Texas, Inc. (ERCOT) and to generation entities, except those seasonal mothballed for the winter season, and transmission service providers in the ERCOT power region.

(b) **Confidentiality.** Filings required under this section are confidential and not subject to public access.

(b c) **Definitions.** In this section, the following definitions apply unless the context indicates otherwise.

(1) **Cold weather critical component** – Any component that is susceptible to freezing, the occurrence of which would lead to a significant risk of immediate loss of total generation output is likely to lead to unit trip, derate or failure to start.

~~(2) **Energy storage resource** – An energy storage system registered with ERCOT for the purpose of providing energy or ancillary services to the ERCOT grid and associated facilities behind the system's point of interconnection necessary for the operation of the system.~~

(3 2) **Generation entity** – An ERCOT-registered resource entity acting on behalf of an ERCOT-registered generation resource or energy storage resource.

(43) **Generation resource** – A generator or energy storage system capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource, as well as associated electric facilities behind the generator's point of interconnection, owned and controlled by the generator, and necessary for the operation of the generator.

~~(54)~~ **Inspection** – The activities that ERCOT engages in to determine whether a generation entity is in compliance with subsection (c) of this section or whether a transmission service provider is in compliance with subsection (f) of this section. An inspection may include site visits; assessments of procedures; interviews; and review of information provided by a generation entity or transmission service provider in response to a request by ERCOT, including review of evaluations conducted by the generation entity or transmission service provider or its contractor. ERCOT will determine, in consultation with the commission and stakeholders through the stakeholder process or other appropriate public forum, the number, extent, and content of inspections and may conduct inspections using both employees and contractors.

~~(6) **Resource** – A generation resource or energy storage resource.~~

~~(75) **Weather emergency preparation measures** – Measures that a generation entity or transmission service provider takes to support the function of a facility and the overall functioning of all aspects of the electric system under the generation entity's or transmission service provider's control in extreme weather conditions, including weatherization, ~~fuel security~~, staffing plans, operational readiness, and structural preparations.~~

TCPA is recommending several edits to the above sections of the proposed rule. The applicability should be clear that units seasonally mothballed are exempt from the provisions of the section. These units are not in operation during the winter months and are likely already not economic to operate during that time. The application of these new requirements, which are unnecessary due to their mothballed status, may result in complete retirement of the resource which

could exacerbate resource adequacy in summer and other time periods during which they are not in seasonal mothball.

The second recommendation is to add a confidentiality provision. First, generation resources are competitive, private assets and enabling competitor access or even media and public access to the specific information provided to ERCOT and the Commission would constitute disclosure of competitively-sensitive, proprietary information. Additionally, these resources are critical infrastructure necessary to the electric system and disclosure of specific vulnerabilities and the manner in which those vulnerabilities are being addressed or will be addressed prevents a security concern for the resources and the employees that operate them. As such, TCPA recommends the rule include a confidentiality provision to ensure all information filed in compliance with the rule is available to ERCOT and the Commission but not to other market participants, the media, or the public.

TCPA also makes several recommendations regarding definitions. The issue experienced during Winter Storm Uri was generally a loss of total resource output and inability to start the resource.

- “Cold weather critical components” are those susceptible to freezing and causing a total immediate loss of output and should be defined as such.
- PURA 35.152 defines energy storage resources as generation assets and requires the owner to register as a power generation company under PURA 39.351(a), so there is no separate definition needed in the rule.³ The distinct definition does not appear to have a practical

³ PURA 35.152

use outside of the definitions themselves, so there should be no loss of effect from deleting proposed Section 25.55(b)(2) and renumbering accordingly.

- The definition of “inspection” is amended to address the issues previously discussed in these comments.
- The “weather emergency preparation measures” definition is modified to specify that they are applicable to all aspects of the electric system under the generation entity’s control or the transmission service provider’s control. For example, fuel security is not a generator’s weatherization issue, but rather, a fixed investment decision and ongoing operational expense that a company may address in any number of ways. The decision regarding those investments is made based on economics and what the market can and will support. It is more appropriate to address fuel security in the context of the Commission’s Project No. 52373 on Market Design, not as a part of weatherization rules.

Weather Emergency Preparedness Reliability Standards for Generation

(c) ~~Phase one~~ **The weather emergency preparedness reliability standards for a generation entity.**

(1) By December 1, 2021, a generation entity, except an entity with an extended outage that encompasses the winter and seasonally mothballed resources, must complete the following winter weather emergency preparations for each resource under its control:

(A) ~~All~~ Take the necessary preparations, necessary where feasible, to place the generation facility in the position for ensure the sustained operation of all cold weather critical components during winter weather conditions, and secure other necessary resources, such as chemicals, auxiliary fuels, and other materials, and personnel required to operate the resource;

- (B) Create an inventory of resources for wind breaks and preparation for temporary
installation of protection in anticipation of extreme cold weather events, ~~adequate~~
~~wind breaks for resources susceptible to outages or derates caused by wind;~~
~~enclosure of~~ protect sensors for cold weather critical components, including the use
of enclosures where operationally practical; inspection of thermal insulation for
damage or degradation and repair of any significantly damaged or degraded
insulation as appropriate; confirmation of the operability of instrument air moisture
prevention systems; maintenance of freeze protection components for all
equipment, including cold weather critical components of fuel delivery systems, ~~the~~
~~failure of which could cause an outage or derate,~~ and establishment of a schedule for
testing of such freeze protection components to ensure power to the components ~~on~~
~~an ongoing monthly basis~~ during the winter; and provide for the installation of
monitoring of systems for cold weather critical components, including circuitry
providing freeze protection or preventing instrument air moisture;
- (C) ~~All actions necessary to prevent a recurrence of~~ Assess possible causes for any cold
weather critical component failure that occurred in the period between November 30,
2020, and March 1, 2021 and describe actions taken or underway to address a
recurrence, where feasible;
- (D) ~~Provision of~~ Provide training on winter weather preparations and operations to relevant
operational personnel; and
- (E) ~~Determination of~~ Determine reasonable minimum design temperature, historical
minimum operating temperature, ~~and~~ or other observed operating limitations based on
temperature, precipitation, humidity, wind speed, ~~and~~ or wind direction.

- (2) By December 1, 2021, a generation entity must submit to the commission and ERCOT, on a form ~~prescribed by ERCOT and~~ developed by ERCOT in consultation with commission staff and stakeholders through the stakeholder process or other appropriate public forum, a winter weather readiness report that:
- (A) Describes ~~all~~ activities taken by the generation entity to complete the requirements of paragraph (1) of this subsection; and
- (B) Includes, a notarized attestation sworn to by the officer of the generation entity's with responsibility for the generation resource's operations ~~highest-ranking representative, official, or officer with binding authority over the generation entity~~, attesting to the completion of all relevant activities described in paragraph (1) of this subsection and the ~~accuracy and~~ veracity of the information described in subparagraph (2)(A) of this subsection.
- (3) Based on the requirements of paragraph (1) of this subsection, ERCOT must develop a comprehensive checklist form that includes ~~checking systems and subsystems~~ containing cold weather critical components and file it with the commission no later than December 10, 2021. In addition, ERCOT must use a generation entity's winter weather readiness report submitted under paragraph (2) of this subsection to adapt the checklist ~~to~~ for the inspections of the generation entity's resources.
- (4) No later than December 10, 2021, ERCOT must file with the commission a summary report of the winter weather readiness reports filed under paragraph (2) of this subsection, including a summary of compliance with the requirements of paragraph (1) and (2) of this subsection and a spreadsheet that delineates compliance with the requirements of paragraph (1) of this subsection for all resources subject to those

requirements. A generation entity will have a reasonable period to appeal any determination of non-compliance and to cure any identified deficiencies.

(5) A generation entity that timely submits to ERCOT the winter weather readiness report required by paragraph (2) of this subsection is exempt, for the 2021 calendar year, from the requirement in Section 3.21(3) of the ERCOT Protocols that requires a generation entity to submit the Declaration of Completion of Generation Resource Winter Weatherization Preparations no earlier than November 1 and no later than December 1 of each year.

(6) Good cause exception. A generation entity may submit a request for a good cause exception with the commission to specific requirements listed in paragraph (1) of this subsection.

(A) A generation entity's request must include:

- (i) A detailed explanation and supporting documentation of the generation entity's inability to comply with relevant portions of a specific requirement of paragraph (1) of this subsection;
- (ii) A detailed description and supporting documentation of the generation entity's efforts that have been made to comply with the relevant portions of paragraph (1) of this subsection;
- (iii) A plan, including a schedule and supporting documentation, to comply with the relevant portions of the specific requirement of paragraph (1) of this subsection for which the good cause exception is being requested from the commission, including a proposed deadline or deadlines for filing updates with the commission on the status of the generation entity's compliance with the

specific relevant portions of the requirement of paragraph (1) of this subsection and expected compliance date;

(iv) Evidence that notice of the request has been provided to ERCOT; and

(v) A notarized attestation sworn to by the generation entity's officer with responsibility for the generation resource's operations ~~highest-ranking representative, official, or officer with binding authority over the generation entity~~ attesting to the ~~accuracy and~~ veracity of the information in the request.

(B) ERCOT is a required party in the proceeding in which a generation entity requests a good cause exception from the commission. ERCOT must make a recommendation to the commission on the request by the deadline set forth by the presiding officer in the proceeding.

TCPA makes recommendations in the redlines above to provide greater clarity, accountability, and operational practicality to the requirements in the rule. The recommendation to delete "Phase One" is due to the absence of a "Phase Two" reference in the rule as proposed. Once another phase is implemented, the rules will be amended to reflect those new requirements. Therefore, there is no need to designate phases of implementation in the subsection titles.

In terms of requirements to be met by December 1 of this year, it is important to provide an exception for units that are on an extended outage through this winter season as well as seasonally mothballed units. Failure to provide the exception for those on extended outage may create a compliance quandary in which a resource owner faces the choice of upending a complex and in-process outage event or defend against a non-compliance violation with which it is impossible to comply.

SB 3 is very clear that the weatherization requirements and rules to be implemented are establishing a preparation standard and not a performance standard.⁴ As such, the proposed rule should be amended to require necessary preparation, as feasible, to put the generation facility in the position to operate. The current language to require preparations “necessary to *ensure* sustained operation” (emphasis added) is a performance standard not a preparation standard in that a resource owner may take every feasible preparation for its resource to operate but no resource owner is able to ensure operations. Therefore, creating a compliance requirement to ensure operations is not reasonable or in compliance with the statutory direction.

Similarly, it may be best operationally to create an inventory of resources, such as windbreaks, but not to install those resources until an extreme cold weather event. Installation of such equipment or use of enclosures may decrease operational performance of a resource in milder weather that could create reliability issues unnecessarily. While it is important for resource owners to be prepared with inventory onsite and ready for installation, the rule should provide the flexibility to each resource owner to determine when installation is most appropriate in terms of the operational nuances of the resource. For example, protection of sensors is key; however, enclosure may prevent optimum operations if the outside temperatures mean an enclosure would make the sensors too hot.

While testing of freeze protection components is important, it is just as important to be clear about what is being tested and recognizing when testing is going to simulate the events under which these components must successfully operate. Winter is the only season in which it is feasible to simulate the types of weather under which cold weather critical components will operate, so it

⁴ Enrolled SB 3, 87th Regular Session, Section 13.

is not physically practical to test these components outside of winter months. For resource owners to properly test components, they must know what they are testing for and the rules should make that clear. For example, is the test to determine if power is reaching those components during cold weather or is there some other specific requirement operators are testing?

Accountability is important; while the highest ranking officer of an entity may have status, it is the officer with responsibility for a resource's operations that will have the direct knowledge and accountability to determine a resource's preparedness and operational practicality. Consequently, that officer is best positioned to attest to the resource's preparedness for cold weather and the person most accountable. TCPA recommends having the officer with responsibility for the generation resource's operation attest to the veracity, which encompasses not just the accuracy but also the truthfulness, of the information required in the rule.

Inspections for a Generation Entity

(d) Inspections for a generation entity.

(1) ERCOT inspections. ERCOT must conduct inspections of resources for the 2021 – 2022

winter season and must prioritize its inspection schedule based on risk level. ERCOT

may prioritize inspections based on factors such as whether a generation resource is

~~critical for electric grid reliability~~; has experienced a forced outage, forced derate, or

failure to start related to extreme weather conditions; or has other vulnerabilities related

to extreme weather conditions.

(2) ERCOT inspection report. ERCOT must provide a report on its inspection of a resource to

the generation entity. The inspection report must address whether the resource has

complied with the requirements in subsection (c) that ERCOT reviewed for the resource

and, if the resource has not complied, ERCOT must provide the generation entity a

reasonable period to appeal the determination and to cure the identified deficiencies. To be a reasonable time period, circumstances must be taken into consideration including but not limited to the time required for the work to be completed, the time it takes for any parts to be acquired, the appropriate timing for any unit to be taken offline, the availability of necessary skilled labor, or other supply chain issues. For example, if a violation occurs, but ERCOT does not believe the unit can be taken offline for the requisite time period without affecting reliability until a certain date, or there are no available workers or contractors with the skills to reliably perform the work until a certain date, the deadline should be set considering those delays combined with the time required to complete the work. The cure period will be tolled during the period in which the generation entity is appealing ERCOT's determination or is following the process described in Section 25.502 (e) to mothball or retire the resource. ~~determined by~~ ERCOT must consider what weather emergency preparation measures the generation entity may be reasonably expected to have taken before ERCOT's next inspection, ~~the reliability risk of the resource's noncompliance,~~ and the complexity of the measures needed to cure the deficiency.

(e) Weather-related failures by a generation entity to provide service. For a generation entity with a resource that experiences repeated or major weather-related forced interruptions of service, ~~including forced outages, derates, or maintenance-related outages,~~ the generation entity must contract with a qualified professional engineer who is not an employee of the generation entity or its affiliate and who has not participated in previous assessments for the resource to assess its weather emergency preparation measures, plans, procedures, and operations. The generation entity must submit the qualified professional engineer's assessment

to the commission and ERCOT. ERCOT must adopt rules, using the stakeholder process or other appropriate public forum, that specify the circumstances for which this requirement applies and specify the scope and contents of the assessment. A generation entity to which this subsection applies may be subject to additional inspections by ERCOT. ERCOT must refer to the commission for enforcement any generation entity that violates this rule and fails to cure the identified deficiencies within a reasonable period of time.

The inspection process is a critical piece of the overall rule. SB 3 was very clear in providing resource owners an opportunity to cure any deficiencies found in the inspection before a referral to the Commission for a violation and possible administrative penalty.⁵ Consistent with other provisions that provide the opportunity to appeal a determination, TCPA is recommending edits to be clear that the opportunity to cure an alleged deficiency is tolled while such a determination is being appealed. Similarly, a resource owner that has initiated the process of either mothballing or retiring a resource has taken steps that would render compliance moot, and therefore should have any opportunities to cure and any proceedings regarding violations or deficiencies tolled while navigating the mothball or retirement process.

As has been evident through the conservative ERCOT operations this summer and the directive from Governor Abbott regarding generation outages in his July 6, 2021 letter to the Commission, a generator resource may not be able to come offline for an outage – whether for maintenance or to correct a deficiency resulting from an inspection – if reliability is a concern or if ERCOT directs the resource to be online. The “reasonable time” to cure must account for those realities as well as the reality that supply chain issues, availability of contractors or other skilled

⁵ *Id.*

labor, and ability to take the unit offline for the required duration to address deficiencies that are not within the control of a resource owner. In addition, it is important to note that maintenance-related outages, derates and forced outages are not necessarily weather-related. In fact, the outages in February 2021 that were weather-related were forced outages; however, not all forced outages and derates were weather-related. That is a very important distinction that is marred in the current language proposed. TCPA's recommended edits provide important clarity to ensure weather-related forced interruptions are addressed without conflating those with other outages or derates that have no relation to weather.

Finally, public input is a key component of all rulemakings as well as the legislative and ERCOT stakeholder processes. ERCOT should be required to conduct any rulemaking, protocol changes or other types of requirements under this or any other rule as part of a public forum. While ERCOT and PUC Staff have knowledge and expertise, there is stakeholder expertise that is based on operational experience with different resource types that is invaluable to an effective and robust weatherization program. The stakeholder process, or some type of forum to solicit and consider public input and industry expertise, should not be sacrificed regardless of the timeframe for implementation. Doing so may create long-term unintended issues that are completely avoidable by tapping into the vast resources available through a public input process.

While it is always up to the policymakers to consider the input and then make decisions after deliberations, it is beneficial, not just to the policymakers at that time but also to those in the future, to have the input and expertise to review and consider. In addition to weatherization, the issues Texas is currently trying to resolve regarding market design, market signals to investors, resource adequacy, and impacts of the changing resource mix are all issues with proposed solutions

that have been raised by a variety of stakeholders over the past decade. Without that public forum, the ability to draw on that information would not be possible today.

TCPA appreciates the work of the Commission and its staff in developing this proposed rule. We appreciate the time and discussion staff has had with our member companies and believe this proposed rule is a good start. With the recommended changes contained in these comments, TCPA believes Texans will get the accountability and better-prepared fleet they deserve. We look forward to continuing to work with staff and other stakeholders on this rule as well as the next phase.

Dated: September 16, 2021

Respectfully submitted,

A handwritten signature in black ink that reads "Michele Richmond". The signature is written in a cursive, flowing style.

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