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**PROJECT NO. 52287**

**POWER OUTAGE ALERT  
CRITERIA**

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**PUBLIC UTILITY  
COMMISSION OF TEXAS**

**VISTRA CORP. COMMENTS ON PROPOSED RULE CONCERNING POWER  
OUTAGE ALERT CRITERIA**

**TO THE PUBLIC UTILITY COMMISSION OF TEXAS:**

Vistra Corp. (Vistra), on behalf of its subsidiary jurisdictional entities, files the following comments in response to the issuance, on December 17, 2021, by Public Utility Commission of Texas (Commission), of proposed 16 Texas Administrative Code § 25.57 concerning Power Outage Alert Criteria. These comments are timely filed.<sup>1</sup>

**I. EXECUTIVE SUMMARY**

Vistra supports the Commission's thoughtful efforts to create criteria for effective communication of potential power outages in accordance with the Legislature's directives in Senate Bill No. 3 and considering lessons learned from Winter Storm Uri.<sup>2</sup> The power system is designed to avoid shedding load except as a last resort to maintain grid stability, which should make any expectation of inadequate generation to meet demand exceptionally infrequent. Thus, while it is important to broadly communicate to Texans if there is a reasonably certain expectation of power outages, power outage alerts should be designed to be used only during those very rare circumstances. And the alert message content should be limited to public safety considerations related to the potential power outage, along with conclusively known facts, if relevant and appropriate for the alert media format.

The Commission's proposed rule largely accomplishes those key considerations. Accordingly, Vistra suggests only a few, but important, changes.

As requested by Commission Staff, Vistra provides a summary of its comments, set on a stand-alone page at the end of this document.

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<sup>1</sup> *Proposal For Publication of New 16 TAC §25.57 as Approved at the December 16, 2021 Open Meeting*, (Dec. 17, 2021) (setting deadline for comments by January 11, 2022).

<sup>2</sup> 87<sup>th</sup> Tex. Leg., R.S., SB 3, § 1 (effective Jun. 8, 2021).

## **II. ENSURING LIKELIHOOD OF LOAD SHED BEFORE ISSUING A POWER OUTAGE ALERT**

Vistra believes that the proposed rule language is intended to limit issuance of power outage alerts to only situations where it is more likely than not that demand will exceed supply. That is because the proposed rule, in Section 25.57(c), states that issuance of a power outage alert “may be recommended when load shed instructions have been issued or are likely to be issued because the system-wide power supply in one or more power regions within Texas may be inadequate to meet demand.”

By establishing the standard that a power outage alert for potential future load shed may be recommended when load shed instructions “are likely to be issued” because demand may exceed supply, the proposed rule incorporates a substantial certainty standard that implies actual likelihood of supply being inadequate—which is the functional equivalent of saying that future load shed is more likely than not. That is the appropriate standard, so that power outage alerts are not issued so often that customers become desensitized to them.

Vistra respectfully requests confirmation that it is correctly reading the Commission’s intent in this regard. Alternatively, if Vistra is not reading the Commission’s intent correctly, then Vistra respectfully requests that the rule be revised to expressly incorporate a “reasonable certainty” or “more likely than not” standard in subsection (c), so that power outage alerts are not issued in the absence of such reasonable certainty.

Additionally, to ensure consistency throughout the proposed rule, Vistra requests that the Commission strike the phrase “may be insufficient” in proposed Section 25.57(d)(1)(A) and replace it with the phrase “is likely to be insufficient.” That way, the rule will use the same “likely to be” language in both subsection (c) regarding the standard for issuance of a power outage alert and subsection (d)(1)(A) regarding ERCOT’s obligation to inform the Commission of conditions indicating a likelihood of insufficient supply.

## **III. FOCUSING THE PROPOSED RULE ON ONLY POWER OUTAGE ALERTS**

Subsection (c)(2) of the proposed rule should be revised so that the rule focuses solely on its one topic: power outage alerts. That subsection states that the Commission “[i]n conjunction with or as an alternative to recommending the issuance of a system-wide power outage alert may

disseminate information by contacting the media,” and by other means. The Commission has that authority today—to contact the media, post on social media, notify government officials, etc. But the proposed rule also suggests that the Commission could utilize this authority “as an alternative” to issuing a power outage alert.

The proposed rule should be focused on the appropriate triggers for issuance of a power outage alert. Consequently, the phrase “as an alternative to” should be deleted, so that the rule’s focus remains appropriately on the criteria for issuance of a power outage alert, without the distraction of, or confusion that could be introduced by, language that discusses alternatives to issuing a power outage alert, especially since the Commission has authority today to pursue those alternatives outside of the specific power outage alert purposes established by Government Code Chapter 411 Subchapter K-1.

#### **IV. ENSURING ONLY CONCLUSIVELY KNOWN FACTS ARE INCLUDED IN A POWER OUTAGE ALERT**

Given the recency, and the impact, of the outages that affected customers during Winter Storm Uri, it is likely, at least in the near term, that customers, market participants, government officials, and the media will be highly attuned to any statements included in a power outage alert. This emphasizes the critical need to include only purely factual information in any such alert.

The proposed rule contemplates that a power outage alert might contain information such as “the initiating event or circumstances that prompted the load shed instructions” (subsection (d)(2)(D)), “the cause or initiating event of the load shed instructions” (subsection (e)(2)(C)), and “the circumstances surrounding the load shed event or expected load shed event” (subsection (f)(2)). In each of these three instances, the proposed rule appropriately limits the inclusion of that information to only where the facts are “applicable and known” (or the functionally identical “known and applicable” phrasing in subsection (f), which extends to subsection (f)(2)).

The proposed rule is correct to limit the inclusion of such information to only what is “applicable and known,” but scenarios that lead to a likelihood of load shed are often a complicated confluence of multiple factors that fluctuate over time. A complete and accurate understanding of


contributing causes are often not known until days, weeks, or even months after an event.<sup>3</sup> And of course, should a power outage alert be issued in anticipation of a likely event, there will be no actual event to explain yet. Additionally, the primary public benefit of a power outage alert is to raise awareness of that potential outcome to allow residents and businesses to prepare accordingly. For all these reasons, the Commission should generally refrain from identifying causes in a power outage alert unless such information is both unambiguously and holistically understood at the time as well as applicable to the preparatory nature of the alert.

## V. CONCLUSION AND PRAYER

Vistra appreciates and applauds the Commission's proposal of a rule that will, in large measure, achieve the statutory objectives in an appropriate manner. Vistra asks that the Commission confirm that its intent is to adopt a rule that will lead to power outage alerts being issued for future load shed only when there is reasonable certainty that demand will exceed supply. Vistra also asks the Commission to revise the proposed rule to delete discussion of alternatives to power outage alerts and to take into account Vistra's recommendations that any "explanation of the circumstances surrounding" an event are included in a power outage alert only if such statements are both relevant and unambiguously, holistically understood (i.e., "applicable and known").

Dated January 11, 2022

Respectfully submitted,

  
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<sup>3</sup> For example, the UT Austin Energy Institute report commissioned by the Commission was not published until July 2021, five months after Winter Storm Uri, and the FERC/NERC report was not published until November 2021, nine months after Winter Storm Uri.

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**EXECUTIVE SUMMARY OF VISTRA CORP.'S COMMENTS ON  
POWER OUTAGE ALERT PROPOSED RULE**

- Power outage alerts should be used only during very rare circumstances when there is reasonable certainty of load shed occurring.
  - The proposed rule's standard: issuance of a power outage alert when load shed instructions have been issued or "are likely to be issued because" demand may exceed system-wide power supply, implies a trigger of *reasonable certainty* of demand exceeding supply, which is appropriate.
  - A power outage alert should be issued for potential future load shedding only when it is more likely than not that power supply will be insufficient to meet demand.
  - Vistra requests that the Commission confirm its intent that the proposed rule effectively requires reasonable certainty that demand will exceed supply before the Commission issues a power outage alert for potential future load shed. If that is not the Commission's intent, then Vistra asks the Commission to expressly include a "reasonable certainty" or "more likely than not" standard in subsection (c) of the rule.
- The Commission already has authority to disseminate public information relevant to an event by contacting the media and by other means, but designating such activity as an alternative under the rule would create uncertainty regarding the criteria for issuing a power outage alert.
- The substance of a power outage alert should focus on making customers aware that load-shedding has been, or is likely to be, ordered and on informing customers where they can seek assistance. It should avoid speculation regarding potential causes.
  - Any additional content, such as regarding "the circumstances surrounding" the event, as proposed in the rule, should be included only to the extent the facts concerning those circumstances are conclusively known.
  - Customers and the public interest are not served by alerts that contain statements that are speculative or not known with certainty.