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**PROJECT NO. 52373**

**REVIEW OF WHOLESALE  
ELECTRIC MARKET DESIGN**

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**PUBLIC UTILITY COMMISSION  
  
OF TEXAS**

**OFFICE OF PUBLIC UTILITY COUNSEL’S RESPONSE TO COMMISSION STAFF’S  
REQUEST FOR WRITTEN COMMENTS TO SPECIFIC QUESTIONS ON  
REVIEW OF WHOLESALE ELECTRIC MARKET DESIGN**

The Office of Public Utility Counsel (“OPUC”) respectfully submits these comments in response to Public Utility Commission of Texas Staff’s (“Commission Staff”) October 25, 2021, questions regarding review of wholesale electric market design.

**I. COMMENTS ON POLR AND RESPONSES TO COMMISSION STAFF’S  
QUESTIONS**

Commission Staff requested comment on the following questions:

**Incentives for Generation**

- 1. The ORDC is currently a “blended curve” based on prior Commission action. Should the ORDC be separated into separate seasonal curves again? How would this change affect operational and financial outcomes?*

The ORDC is designed to increase market prices in response to scarcity conditions. The Commission has stated numerous times that it desires to move away from a market where cost recovery is based on crisis events to a more managed cost recovery. To that end, the Commission should reconsider the need for ORDC and replace it entirely. That said, OPUC believes that there is no benefit to seasonal curves as crises events can occur during any season as we have seen in 2021.

- 2. What modifications could be made to existing ancillary services to better reflect seasonal variability?*

Ancillary services should be procured based on anticipated seasonal market conditions, not flat pre-determined purchase levels. These seasonal amounts of procurement should be reviewed

and adjusted as needed to maintain system reliability. As noted in the response to Question No. 1, OPUC believes that the likelihood of seasonal variability is real as Texas residents witnessed in 2021.

3. *Should ERCOT develop a discrete fuel-specific reliability product for winter? If so, please describe the attributes of such a product, including procurement and verification processes.*
  - a. *How long would it take to develop such a product?*
  - b. *Could a similar fuel-based capability be captured by modifying existing ancillary services in the ERCOT market?*

While a fuel-specific winter reliability product sounds attractive at first, OPUC notes that all forms of generation failed during winter storm URI on a large scale. OPUC is not sure how creating a new product the market will have to pay for will improve the reliability of generation assets that cannot get physical fuel delivered to their plant or is otherwise rendered inoperable due to weather conditions. In other words, much of the failure with winter storm Uri appears to be a physical lack of fuel, not a contractual issue of firmness of delivery. If an additional ancillary service can guarantee improved delivery of fuel supplies to a plant, it is probably worth investigating. Otherwise, it is just an additional cost to the market without a concomitant benefit. However, if Senate Bill (“SB”) 3<sup>1</sup> and House Bill (“HB”) 3648<sup>2</sup> are fully implemented by the PUC and the Railroad Commission of Texas (“RRC”), some of the issues related to physical lack of fuel and inability to reliably deliver fuel and electricity during a weather emergency event can be significantly mitigated or eliminated. The PUC has taken the initial step towards achieving the goals of SB 3 and HB 3648 by promulgating first phase weatherization rules.<sup>3</sup>

#### **Load Serving Entity (LSE) Obligation**

4. *Are there alternatives to a load serving entity (LSE) Obligation that could be used to impose a firming requirement on all generation resources in ERCOT?*

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<sup>1</sup> S.B. 3, 87<sup>th</sup> Leg., R.S. (2021).

<sup>2</sup> H.B. 3648, 87<sup>th</sup> Leg., R.S. (2021).

<sup>3</sup> 16 TAC § 25.55.

Firming requirements should be on entities that control generation, not on LSEs, especially those without affiliated generation. The market already has major disincentives for physical withholding of generation resources. LSEs utilize bilateral contracts to hedge their anticipated usage from real time market price volatility. Actual plant dispatch is handled by ERCOT and is strictly between the generator and ERCOT. OPUC is not sure what creating an LSE Obligation will do to improve the physical capability of a generator to deliver or how an LSE Obligation will promote a generator to invest further in the market. Indeed, future generation buildout will only serve to dilute the per unit value of a generation asset, so the only value we see to an LSE Obligation is to increase the value of existing generation, not to encourage the buildout of more generation.

*5. Are there alternatives to an LSE Obligation that could address the concerns raised about the stakeholder proposals submitted to the Commission?*

Please see OPUC's response to Question No. 4. OPUC does not see value in an LSE Obligation.

*6. How can an LSE Obligation be designed to protect against the abuse of market power in the wholesale and retail markets?*

- a. Will an LSE Obligation negatively impact customer choice for consumers in the competitive retail electric market in ERCOT? Can protective measures be put in place to avoid a negative impact on customer choice? If so, please specify what measures.*
- b. How can market power be effectively monitored in a market where owners of power generation also own REPs that serve a large portion of ERCOT's retail customers?*
- c. What is the impact on self-supplying large industrial consumers who will have to comply with the LSE Obligation and will it impact their decision to site in Texas?*
- d. What is the impact of an LSE Obligation on load-serving entities that do not offer retail choice, such as municipally owned utilities or electric cooperatives?*
- e. Can market power be monitored in the bilateral market if an LSE Obligation is implemented in ERCOT? Can protective measures be put in place to ensure*

*that market power is effectively monitored in ERCOT with an LSE Obligation?  
If so, please specify what measures.*

*f. Should the LSE Obligation include a “must offer” provision? If so, how should it be structured?*

OPUC believes customer choice will be adversely impacted by the proposed LSE Obligation as it requires LSEs to firm up a load obligation for a period that could be far in excess of their average sales contract. Customers who can presently shop for an electric provider and can switch providers rather seamlessly may be prevented from doing so because of its provider’s long term capacity obligation. In addition, smaller non-affiliated Retail Electric Providers (REPs) generally offer lower rates for their products which put downward pressure on overall prices in the market. If there is an LSE Obligation, it is possible that at least some of these REPs will be acquired by REPs with affiliated generation or will go out of business altogether, which will have the effect of raising prices and hence overall costs to customers. A related concern with the LSE Obligation proposed at the Commission workshop is the high degree of concentration of generation asset ownership and REP loads served among affiliate companies in ERCOT. There is a potential for affiliated LSEs to procure all of the capacity of their affiliate generation companies (and possibly more) at a low price under the guise of anticipated future growth and create a short squeeze of capacity availability for other non-affiliated LSEs. The structure of the ERCOT market and the ownership of various assets by affiliated companies creates the potential for market abuse on a large scale. Given this can all be accomplished via bilateral contracts outside the control of ERCOT, OPUC is not sure how the Commission or the Independent Market Monitor (IMM) could effectively monitor this market power or abuse.

*7. How should an LSE Obligation be accurately and fairly determined for each LSE?  
What is the appropriate segment of time for each obligation? (Months? Weeks? 24  
hour operating day? 12 hour segments? Hourly?)*

See responses to Question Nos. 4, 5 and 6. It would be difficult to accurately and fairly determine an LSE’s Obligation in the current market for the reasons already discussed and thus OPUC does not see value in an LSE Obligation.

8. *Can the reliability needs of the system be effectively determined with an LSE Obligation? How should objective standards around the value of the reliability-providing assets be set on an on-going basis?*
- a. *Are there methods of accreditation that can be implemented less administrative burden or need for oversight, while still allowing for all resources to be properly accredited?*
  - b. *How can winter weather standard be integrated into the accreditation system?*

See response to Question 7. An LSE Obligation does not equate to reliability improvement if there is no requirement to build generation in response. OPUC also notes that ERCOT currently has adequate overall capacity but may be somewhat deficient in reliable dispatchable generation assets. Any attempt to value generation assets differently based on dispatchability will create winners and losers among generators in the ERCOT market, which may put a chill on future generation investments in the market.

9. *How can the LSE Obligation be designed to ensure demand response resources can participate fully and at all points in time?*

If the demand response (DR) product can provide the same net impact to the system as a generation product, there should be no difference in how they are treated. As Commissioner Glotfelty noted at a recent workshop, a megawatt is a megawatt (as long as they are providing the same level of service).<sup>4</sup> On the other hand, it is not satisfactory that a DR program be expected to substitute for generation if the entity is out for 5 days of freezing temperatures whether they “volunteered” or not. OPUC believes there should be a limit on the length of time a DR resource is expected to perform, or a requirement that participants are cycled on and off during an extended deployment.

10. *How will an LSE Obligation incent investment in existing and new dispatchable generation?*

The ERCOT market has been incenting investment in new dispatchable generation for almost twenty years under a variety of market designs and programs. To date we have seen no significant investment in this type of generation resources no matter how many more dollars are

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<sup>4</sup> Public Utility Commission Work Session Meeting (October 14, 2021).

offered to the market or design changes are made. OPUC does not see how an LSE Obligation will improve this dynamic.

*11. How will an LSE Obligation help ERCOT ensure operational reliability in the real-time market (e.g., during cold weather events or periods of time with higher than expected electricity demand and/or lower than expected generation output of all types)?*

The LSE has no ability to impact the actual operation, availability or dispatchability of generation assets in ERCOT. Thus, OPUC does not see how an LSE Obligation does anything to improve physical operational reliability in the real time market. It will, however, offer the potential to extract even more dollars out of existing generation without ensuring any future investment in additional generation facilities.

*12. What mechanism will ensure those receiving revenue streams for the reliability services perform adequately?*

Unless the issue of fuel availability and plant reliability are addressed by both the Commission and the RRC, OPUC does not see any direct linkage between adding additional revenue streams to generators and ensuring more physical reliability of generation plants. As noted above, the Texas Legislature enacted SB 3 and HB 3648 to address the issue of physical reliability of the electric grid and reliable fuel delivery sources to power the generations in times of severe weather conditions.

*13. What is the estimated market and consumer cost impact if an LSE obligation is implemented in ERCOT? Describe the methodology used to reach the dollar amount.*

Without question there will be a cost to consumers if there is any type of reliability investment because of implementing an LSE Obligation in ERCOT. However, OPUC cannot estimate this cost without more specific definitions of the parameters of a potential LSE Obligation. However, as mentioned in OPUC's response to Question 12, OPUC is not convinced there is a tangible value to any expenditures by an LSE under an LSE Obligation program.

*14. How long will the LSE Obligation plan take to implement?*

As with OPUC's response to Question No. 13, without more specifics of a proposed LSE Obligation program, it is difficult to estimate the time it would take to implement, except to note other market participants have stated it may take some time to do so.

*15. If the Commission adopts an LSE Obligation, what assurances are necessary to ensure transparency and promote stability within retail and wholesale electric markets?*

As with OPUC's response to Question No. 13, without more specifics of a proposed LSE Obligation program, it is difficult to identify what assurances would be necessary to ensure transparency and promote stability within retail and wholesale electric markets.

*16. Are there relevant "lessons learned" from the implementation of an LSE Obligation in the SPP, CAL-ISO, MISO, and Australian markets that could be applied in ERCOT?*

It would be informative if any significant buildout of additional new generation assets into the market can be directly linked to the imposition of an LSE Obligation, and if so, what was the cost/benefit of these additions to the market. However, it is OPUC's understanding that some of these other markets (SPP and MISO in particular) continue to be vertically integrated and thus there is a natural obligation between load and generation. When Texas' utilities were vertically integrated, Texas had established an integrated resource planning process to ensure there was adequate generation to serve current and projected load. The Texas market no longer has this natural obligation and thus the implementation of an LSE Obligation such as contemplated in these questions is not comparable to all these other markets.

## **II. EXECUTIVE SUMMARY**

An LSE Obligation will not improve reliability in Texas and will lead to higher prices on consumers without any corresponding benefit. The LSE has no ability to impact the actual operation, availability or dispatchability of generation assets in ERCOT. Thus, OPUC does not see how an LSE Obligation does anything to improve physical operational reliability in the real time market. It will, however, offer the potential to extract even more dollars out of existing generation without ensuring any future investment in additional generation facilities.



Firming requirements should be on entities that control generation, not on LSEs, especially those without affiliated generation. The market already has major disincentives for physical withholding of generation resources. LSEs utilize bilateral contracts to hedge their anticipated usage from real time market price volatility, but actual plant dispatch is handled by ERCOT and is strictly between the generator and ERCOT. OPUC does not believe that creating an LSE Obligation will improve the physical capability of a generator to deliver or will promote a generator to invest further in the market.

Furthermore, OPUC believes customer choice will be adversely impacted by the proposed LSE Obligation as it requires LSEs to firm up a load obligation for a period that could be far in excess of their average sales contract. Customers who can presently shop for an electric provider and can switch providers rather seamlessly may be prevented from doing so because of its provider's long term capacity obligation. In addition, smaller non-affiliated Retail Electric Providers (REPs) generally offer lower rates for their products which put downward pressure on overall prices in the market. If there is an LSE Obligation, it is possible that at least some of these REPs will be acquired by REPs with affiliated generation or will go out of business altogether, which will have the effect of raising prices and hence overall costs to customers. A related concern with the LSE Obligation is the high degree of concentration of generation asset ownership and REP loads served among affiliate companies in ERCOT. The structure of the ERCOT market and the ownership of various assets by affiliated companies creates the potential for market abuse on a large scale. Given this can all be accomplished via bilateral contracts outside the control of ERCOT, OPUC is not sure how the Commission or the Independent Market Monitor (IMM) could effectively monitor this market power or abuse.

Finally, when Texas' utilities were vertically integrated, Texas had an established integrated resource planning process to ensure there was adequate generation to serve current and projected load. The Texas market no longer has this relationship between load and generation and thus the implementation of an LSE Obligation such as contemplated in Staff's request for comments will not result in improved reliability.

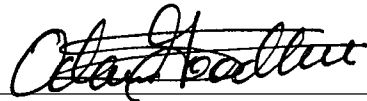
### III. CONCLUSION

OPUC appreciates the opportunity to provide these comments on the Review of the Wholesale Electric Market Design and looks forward to working with Commission Staff and other stakeholders in this project.

Date: November 1, 2021

Respectfully submitted,

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