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PROJECT NO. 53191

REORGANIZATION OF §25.505 **§** **BEFORE THE**
§ **PUBLIC UTILITY COMMISSION**
§ **OF TEXAS**

COMMENTS OF TEXAS COMPETITIVE POWER ADVOCATES

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

Texas Competitive Power Advocates (TCPA)¹ submits the following comments concerning the proposed repeal and replacement of 16 Tex. Admin. Code (TAC) § 25.505, including the creation of new rules 16 TAC §§ 25.506 & 25.509, as approved for publication by the Public Utility Commission of Texas (Commission) at its February 25, 2022 open meeting and as published in the *Texas Register* on March 11, 2021.²

I. Comments Applicable to Multiple Sections

A. §§25.505(b)(1) & 25.509(b)(1): The definitions of “generation entity” should incorporate energy storage resources to avoid gaps and be consistent with 16 TAC § 25.55

The proposed change to the definition of “generation entity” in 16 TAC § 25.505(b)(1) to mirror verbiage in the definition of “load entity” raises the possibility of excluding energy storage resources from the rule’s applicability. This is because specifying that a generation entity owns or controls a generator “registered with ERCOT as a generation resource” carries specific meaning

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

² Proposal for Publication to Repeal 16 TAC § 25.501 and Replace it with New 16 TAC § 25.506, and New 16 TAC § 25.509 as Approved at the February 25, 2022, Open Meeting (Feb. 25, 2022) (hereafter “PFP”).

in the ERCOT Protocols. As defined in Section 2 of the ERCOT Protocols, the broader term “Resource” has a number of sub-definitions, including Energy Storage Resource, Generation Resource, and Load Resource. While load resources are clearly covered by 16 TAC § 25.505(b)(2), with the new restrictive language in the definition of “generation entity” in 16 TAC § 25.505(b)(1) it is not clear whether or how energy storage resources should be considered in the rule.

The Commission addressed a similar dynamic in Project No. 51840 recently, when it adopted 16 TAC § 25.55, relating to Weather Emergency Preparedness. In that rule, the Commission incorporated energy storage resources into the definition of “generation entity,” and TCPA suggests the Commission mirror that approach in both 16 TAC §§ 25.505(b)(1) & 25.509(b)(1) as follows:

(b) Definitions.

- (1) Generation entity** – entity that owns or controls a generation resource. A generation resource is a generator capable of providing energy or ancillary services to the ERCOT grid and that is registered with ERCOT as a generation resource or an energy storage resource.

B. §§25.505(f), 25.506(c), and 25.509(d): The phrase "in consultation with commission staff" should be revised to avoid confusion and clarify that ERCOT's consultation with Staff will be as a stakeholder

In the “Development and implementation” sections of each of the proposed rules (16 TAC §§ 25.505(f), 25.506(c), and 25.509(d)), the proposed rule states that “ERCOT must use a stakeholder process, in consultation with commission staff, to develop and implement rules...”

The comma-bracketed clause could be read to either mean Staff must be consulted in development of the rules or that Staff must be consulted in the use of the stakeholder process. TCPA believes the former is the intended meaning, consistent with the functions assigned by the ERCOT Bylaws to the Technical Advisory Committee (TAC) (acting in part through its Protocol Revision

Subcommittee (PRS), which is accountable to TAC.)³ As contemplated by the Bylaws, Staff frequently participates in the stakeholder process. To avoid any potential confusion, TCPA suggests one minor modification to better reflect this understanding:

(#) Development and implementation. ERCOT must use a stakeholder process, ~~in~~ including consultation with commission staff, to develop and implement rules that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

II. Specific Recommendations

C. 25.505(e)(4)(B): The rule should incorporate the definition of “non-dispatchable resources” established by Senate Bill 3 (SB 3) in PURA § 39.159

Section 18 of SB 3 provided a statutory definition that may be relevant to 16 TAC § 25.505(e)(4)(B)’s use of that term⁴:

Sec. 39.159. DISPATCHABLE GENERATION. (a) For the purposes of this section, a generation facility is considered to be non-dispatchable if the facility's output is controlled primarily by forces outside of human control.

Accordingly, the above definition should be incorporated into 16 TAC 25.505(b) to provide better clarity to 25.505(e)(4)(B)⁵:

(#) Non-dispatchable resource. A resource for which the facility’s output is controlled primarily by forces outside of human control.

D. 25.509(c)(7): The Commission should replace “actual marginal costs” with “reasonable, verifiable operating costs” to reflect the language established by SB 3 in PURA § 39.160

³ Article 5, Section 5.2 Functions of TAC, Amended and Restated Bylaws (approved on October 12, 2021), Participation by stakeholders including market participants and Public Utility Commission Staff is key to the process contemplated by the Bylaws for developing ERCOT market rules (e.g., Protocols/Market Guides).

⁴ [Generation entities will provide ERCOT with] “projected output of non-dispatchable resources such as wind turbines, run-of-the-river hydro, and solar power”

⁵ As the term “non-dispatchable” only appears in 16 TAC § 25.505, this addition would not be additive in the other proposed rule sections.

TCPA raised concerns in Project No. 51871⁶ that during extreme operating events generators regularly incur additional operating expenses in support of grid reliability that may not be strictly considered “marginal costs,” including fuel costs, backup fuel procurement, chemical supplies, water treatment expenses, heating/cooling equipment, and additional staffing. Section 18 of SB 3 clearly set an expectation that when generators are operating to support reliability in extreme events, they should not be forced to operate at a loss:

(g) The emergency pricing program *must allow generators to be reimbursed for reasonable, verifiable operating costs that exceed the emergency cap.*

While this section of the statute specifically pertains to the emergency pricing program that has yet to be implemented, the underlying principle that generators should not operate at a loss in support of reliability is critical to maintaining the economic viability of the market as it is designed today and so is a concern even without the emergency pricing program (EPP). The provisions in the PFP retain problematic language that only “actual marginal costs” can be recovered in excess of the LCAP. TCPA contested the retention of this language in its comments filed last summer in both Project No. 51871 and on NPRR 1086.

The concern regarding generators recouping their reasonable costs was expressed during the March 9, 2022 Senate Business & Commerce committee in the discussions Senator Nichols had with Chairman Lake and ERCOT Interim CEO Brad Jones about ERCOT’s extensive use of Reliability Unit Commitment (RUC). Whether it’s the Scarcity Pricing Mechanism (SPM), the EPP, or some other tool being used under the name of reliability, the retention of “actual marginal costs” continues to send a message to the market that generators may be expected to operate at a loss, which ultimately would serve to undermine investment. The Legislature has indicated

⁶ See TCPA’s comments filed in Project No. 51871 at [51871_36_1131963.PDF \(texas.gov\)](#)

through enactment of SB 3 and in recent questions concerning the ability of thermal generators to recoup their costs when units are forced online that generators must be allowed to recover their reasonable, verifiable operating costs. The PFP's provisions that limit generator recovery to "actual marginal costs" runs counter to this policy. TCPA, therefore, recommends that the Commission incorporate SB 3's "reasonable, verifiable operating cost" language in the rule:

(c)(7) Reimbursement for Operating Losses when the LCAP is in Effect. When the system-wide offer cap is set to the LCAP, ERCOT must reimburse resource entities for any ~~actual marginal~~ reasonable, verifiable operating costs in excess of the larger of the LCAP or the real-time energy price for the resource. ERCOT must utilize existing settlement processes to the extent possible to verify the resource entity's costs for reimbursement.

If the Commission declines to incorporate this change at this time, TCPA respectfully requests that the Commission open a rulemaking to implement the emergency pricing program and this concept in short order following the completion of this rulemaking.

E. 25.509 General

The PFP removes the concept of the Value of Lost Load (VOLL) from the System-Wide Offer Cap (SWOC) provisions of the Commission's rules (current 16 TAC § 25.505(g)(6)(E), which will be replaced by § 25.509(c)(6)). To make clear that the removal of VOLL does not leave future readers wondering whether that concept is somehow coupled with the calculation of the SWOC, TCPA recommends that the Preamble to the order adopting these new rules clarify that: *The System Wide Offer Cap calculations do not take into account the value of lost load (VOLL) and, thus, should not be read as an estimate of or proxy for VOLL.*

F. 25.509(c)(7)

1. The ORDC reporting requirement may better fit under the new 25.505 along with other resource adequacy reporting requirements

TCPA supports inclusion of the new rule requirement to reflect the ORDC reporting requirement established by the Commission's Phase I market design blueprint. Organizationally, TCPA suggests that the Commission may wish to position this rule provision in 16 TAC § 25.505 along with other resource adequacy reporting requirements rather than in the scarcity pricing mechanism provisions under 16 TAC § 25.509 (which is more operational, pertaining to the peaker net margin calculation and offer cap restrictions).

2. The Commission should expand the rule language to ensure that the ORDC reporting that it receives provides holistic context by considering interactions between the ORDC and other activities

Wherever the ORDC reporting requirement is placed, the Commission should specify in the rule that the biennial ORDC report should take into account any interactions between the ORDC and other activities, such as ancillary service procurements and out-of-market actions (e.g., RUCs, ERS deployments, use of TDU load management programs). This would be consistent with Commission discussion at the March 10, 2022 open meeting. TCPA suggests:

(#) Operating Reserve Demand Curve (ORDC) report. ERCOT must publish, by November 1 of every even numbered year, a report analyzing the efficacy, utilization, related costs, and contribution of the ORDC to grid reliability in the ERCOT power region. The report must consider whether and how the ORDC has interacted with other ERCOT activities, such as ancillary service procurements and out of market actions such as reliability unit commitments and demand response deployments.

III. Conclusion

TCPA appreciates the Commission's consideration of these comments. TCPA understands that these comments are intended to focus on reorganization of current 16 TAC § 25.505 and that future projects will focus on substantive changes to the rules. However, TCPA highlighted some areas of substantive concern to flag for inclusion in the future projects addressing policy areas of these rules. TCPA continues to support a holistic implementation of wholesale market design elements, with a goal of increasing the amount of dispatchable generation in ERCOT through regulatory certainty, without reaching scarcity, for reliable resources. As such,

TCPA reserves the right to take different position(s) in future rulemakings that address these market parameters.

Dated: March 18, 2022

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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PROJECT NO. 53191

REORGANIZATION OF § 25.505

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**BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS**

EXECUTIVE SUMMARY OF TCPA COMMENTS

Comments applicable to multiple sections

- **25.505(b) & 25.509(b):** The definitions of “generation entity” should incorporate energy storage resources to avoid gaps and be consistent with 16 TAC § 25.55
- **25.505(f), 25.506(c), and 25.509(d):** The phrase "in consultation with commission staff" should be revised to avoid confusion and clarify that ERCOT’s consultation with Staff will be as a stakeholder

Comments on specific sections

- **25.505(e)(4):** The Commission may wish to incorporate the definition of “non-dispatchable resources” established by SB 3 in PURA § 39.159
- **25.509(c)(7):** The Commission should replace “actual marginal costs” with “reasonable, verifiable operating costs” to reflect the language established by SB 3 in PURA § 39.160
 - If the Commission declines to make this change in the current rulemaking, TCPA requests that the Commission promptly open a rulemaking to implement the provisions of PURA § 39.160 following the completion of this rulemaking
- **25.509 (general):** The Preamble of the rule should clarify that The System Wide Offer Cap calculations in § 25.509(c) do not take into account the value of lost load (VOLL) and, thus, should not be read as an estimate of or proxy for VOLL.
- **25.509(c)(7):**
 - The ORDC reporting requirement may better fit under the new 25.505 along with other resource adequacy reporting requirements
 - The Commission should expand the rule language to ensure that the ORDC reporting that it receives provides holistic context by taking into account any interactions between the ORDC and other activities, such as ancillary service procurements and out-of-market actions (e.g., RUCs, ERS deployments, use of TDU load management programs, etc.)