



## Filing Receipt

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**PUC DOCKET NO. 53401**

**ELECTRIC WEATHER  
PREPAREDNESS STANDARDS-  
PHASE II**

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**BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS**

**TEXAS INDUSTRIAL ENERGY CONSUMERS' COMMENTS**  
**ON THE PROPOSAL FOR PUBLICATION**

**I. INTRODUCTION**

As the Commission is aware, Texas Industrial Energy Consumers (TIEC) represents some of the largest electricity consumers in ERCOT. TIEC members need reliable power to operate their businesses and support reasonable, cost-effective weatherization requirements that will improve performance during extreme weather events. In addition, many TIEC members also own and operate on-site generation facilities that are registered as power generation companies and will be subject to the requirements adopted under this rule. As such, TIEC is interested in a balanced rule that will improve weatherization preparedness without imposing overly burdensome requirements on market generation resources.

TIEC appreciates that the Proposed Rule incorporates many of the stakeholder suggestions that were adopted during the Phase I weatherization standards rulemaking. However, the Proposed Rule can be further improved by giving the Commission greater flexibility in applying the weatherization and attestation requirements. As in the existing version, the rule requires an attestation from the entity's highest executive officer that the entity has implemented weather emergency preparation measures. While TIEC understands the need for high-level executive engagement on these important issues, this can pose unique challenges for TIEC members in particular, who are not primarily in the power generation business and have to obtain an affidavit from a global, corporate Chief Executive Officer (CEO) who may be responsible for dozens of business units across the world that have nothing to do with power generation. Some TIEC members are organized in a manner that makes this more workable, and have special purposes entities that own and operate generation assets. But for those who hold generation assets under the general corporate parent, this requirement is burdensome and does not target the personnel with the best first-hand knowledge of compliance. TIEC recognizes that the Commission considered this issue in the last round and is now proposing a more limited alternative solution in

these comments that would allow for advance Commission approval to have a different executive sign the attestation under certain circumstances.

Additionally, the rule requires generation entities to implement, at a base level, preparation measures designed to allow for sustained operations during the 95th percentile of the average 72-hour temperature reported during the winter and summer. TIEC appreciates that this is a preparation standard rather than an after-the-fact performance standard, consistent with the prior weatherization rule. However, the proposal does not provide an exemption process for situations where complying with weatherization preparedness measures would be cost prohibitive or may push unit retirements that would cause a reduction in overall reliability. From the perspective of TIEC members as customers, weatherization standards should strike an appropriate balance between promoting performance during extreme weather events, but without imposing excessive cost or resource burdens on generators that may be considering retirement. As further discussed below, TIEC believes the rule should give the Commission additional flexibility to address these situations.

## II. COMMENTS

### A. **The Rule should include a process where generation entities can request Commission approval for another officer or executive with authority to execute the notarized attestation.**

The Commission should consider allowing any officer or executive with authority to bind a generation entity to attest to the declaration of preparedness. As in the previous rulemaking,<sup>1</sup> TIEC's preference is still for the Commission to broaden who may execute the attestation to be consistent with compliance requirements under ERCOT's Nodal Protocols.<sup>2</sup> However, TIEC

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<sup>1</sup> *Rulemaking to Establish Weatherization Standards*, Project No. 51840, TIEC Comments on the Rulemaking to Establish Weatherization Standards at 5-6 (Sep. 16, 2021).

<sup>2</sup> See ERCOT Nodal Protocols Section 3.21(3) ("...The [Declaration of Completion of Generation Resource Winter Weatherization Preparations] shall be executed **by an officer or executive with authority to bind** the Resource Entity.") (emphasis added); see also Section 3.13.1.19 (3)(c) ("...The calculation of the accelerated depreciation as described herein must be supported by an attestation executed **by an officer or executive with the authority to bind** the Resource Entity or the QSE representing the Resource Entity.") (emphasis added); Section 4.4.6.3 (3) ("...The attestation [for a PTP Obligation bid] must be executed **by an officer or executive with authority to bind** the NOIE, and submitted to ERCOT.") (emphasis added); Section 5.6.5.1 (1)(b)(i) ("An attestation signed by **an officer or executive with authority to bind** the QSE stating that the information contained in the [Resource Make-Whole Payment] submission is accurate;") (emphasis added); Section 16.16.2(1) ("Each Counter-Party must submit to

recognizes that the Commission did not adopt this suggestion from numerous stakeholders in the Phase I weatherization rulemaking. If the Commission is disinclined to allow a lower-level executive with direct knowledge to make this attestation, then as an alternative TIEC suggests that the Commission should create a process where generation entities can request pre-approval to have a different representative execute the attestations.

Many TIEC members own and operate a registered Generation Resource, but these entities are not primarily in the power generation businesses and own the generation as one small part of a larger business producing products like motor fuels, chemicals, industrial gases, or other products. Most TIEC members' CEOs will have little to no knowledge of details around on-site generation at specific industrial sites. As such, it is unlikely the "highest ranking representative" within the organization has direct knowledge or responsibility for weatherization or the day-to-day operations of the generation resources. Particularly in this situation, allowing a TIEC member to seek approval to have an executive sign the attestation who is in charge of Texas operations, for example, would be appropriate.

TIEC suggests the following language to implement this suggestion:

(3)(A)(v) Includes a notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the completion of all applicable activities described in paragraph (1) of this subsection, and to the accuracy and veracity of the information described in subparagraph (3)(A) of this paragraph. A generation entity may petition the Commission to authorize a different officer or executive with binding authority over the generation entity to execute the notarized attestation in lieu of the highest ranking representative, official or officer.

...

(3)(B)(v) Includes a notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the completion of all applicable activities described in paragraph (1) of this subsection, and to the accuracy and veracity of the information described in subparagraph (3)(B) of this paragraph. A generation entity may petition the Commission to authorize a different officer or executive with binding

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ERCOT annually a notarized certificate signed by *an officer or executive with authority to bind* the Counter-Party ...to Meet ERCOT Additional Minimum Participation Requirements....") (emphasis added).

authority over the generation entity to execute the notarized attestation in lieu of the highest ranking representative, official or officer.

**B. The Commission should add a good cause exception where a generation entity can request a tailored requirement.**

There may be situations where complying with the Commission's proposed weatherization standards will be technologically infeasible, cost prohibitive, or may accelerate a potential retirement decision for an existing generation unit. Failing to provide for an exception process could actually degrade reliability, working against the intent of the proposal.

To address this issue, the Commission should add a good cause exception identical to the existing good cause exception in 16 TAC § 25.55(c)(6). As stated in the rulemaking process for the current version of 16 TAC § 25.55, some process to consider a generating facility's specific situation is essential to avoid possibly accelerating the retirement of existing units.<sup>3</sup> Providing the Commission with flexibility would help ensure there are no unintended adverse reliability impacts from the rule.

As part of this process, the Commission should also consider allowing generation entities to petition for tailored weatherization plans, including specific exemptions or modifications to the general requirement. Under this process, the Commission would have greater flexibility and could weigh the reliability benefits of weatherization against potential adverse outcomes in limited cases where the general standard creates unintended consequences. Although TIEC believes such an exception should be used sparingly, the Commission should have the ability to consider the particular circumstances of generation units to avoid accelerating potential retirements or other suboptimal outcomes. To implement this alternative suggestion, TIEC proposes the following language:

- (c)(1) **Winter season preparations.** By December 1 each year, a generation entity must complete the following winter weather emergency preparation measures for each resource under its control. A generation entity must maintain these measures throughout the winter season. A generation entity must update its winter weather emergency preparation measures no later than one year after ERCOT files a historical weather study report under subsection (i) of this section. A generation

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<sup>3</sup> Project No. 51840, TIEC Comments on the Rulemaking to Establish Weatherization Standards at 3.

entity may request a tailored winter weather preparation standard for an existing unit if complying with the general standard would be technologically infeasible, cause the unit to prematurely retire, create an unjustified financial burden relative to the reliability benefits, or if otherwise justified as determined by the Commission.

...

- (c)(2) **Summer season preparations.** By June 1 each year, a generation entity must complete the following summer weather emergency preparation measures for each resource under its control. A generation entity must maintain these measures throughout the summer season. A generation entity must update its summer weather emergency preparation measures no later than one year after ERCOT files a historical weather study report under subsection (i) of this section. A generation entity may request a tailored summer weather preparation standard for an existing unit if complying with the general standard would be technologically infeasible, cause the unit to prematurely retire, create an unjustified financial burden relative to the reliability benefits, or if otherwise justified as determined by the Commission.

### III. CONCLUSION

TIEC appreciates the opportunity to comment on the Proposed Rule and looks forward to working with the Commission and stakeholders to develop a final rule.

Respectfully submitted,

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**Executive Summary**

- TIEC appreciates that the Proposed Rule incorporates many of the stakeholder suggestions that were adopted during the Phase I weatherization standards rulemaking. However, the Proposed Rule can be further improved by giving the Commission greater flexibility in applying the weatherization and attestation requirements.
- TIEC understands the need for high-level executive engagement on important weatherization issues, but this can pose unique challenges for TIEC members in particular, who are not primarily in the power generation business and have to obtain an affidavit from a global, corporate Chief Executive Officer (CEO) who may be responsible for dozens of business units across the world that have nothing to do with power generation.
- If the Commission is disinclined to allow a lower-level executive with direct knowledge to make the attestation, then as an alternative TIEC suggests that the Commission should create a process where generation entities can request pre-approval to have a different representative execute the attestations.
- TIEC appreciates that the Proposed Rule includes a preparation standard, rather than an after-the fact performance standard, consistent with the prior weatherization rule. However, the proposal does not provide an exemption process for situations where complying with weatherization preparedness measures would be cost prohibitive or may push unit retirements that would cause a reduction in overall reliability.
- The Commission should add a good cause exception identical to the exemption in the existing rule to ensure there are no unintended adverse reliability impacts from the rule.
- The Commission should also consider allowing generation entities to petition for tailored weatherization plans, including specific exemptions or modifications to the general requirement. Under this process, the Commission would have greater flexibility and could weigh the reliability benefits of weatherization against potential adverse outcomes in limited cases where the general standard creates unintended consequences.