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PROJECT NO. 54224

**COST RECOVERY FOR SERVICE TO
DISTRIBUTED ENERGY RESOURCES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**TEXAS PUBLIC POWER ASSOCIATION'S RESPONSE TO
QUESTIONS FOR COMMENT**

The Texas Public Power Association (TPPA) appreciates the opportunity to respond to the questions for comment issued by the Staff of the Public Utility Commission of Texas (Commission) regarding cost recovery for distributed energy resources (DERs). These comments are submitted on behalf of TPPA and do not necessarily reflect the opinions of any individual TPPA member.

Formed in 1978, TPPA is the statewide association for the 72 municipally owned utilities (MOUs) in Texas. TPPA membership also includes several electric cooperatives and joint action agencies, as well as the Lower Colorado River Authority. TPPA members serve urban, suburban, and rural Texas and vary in size from large, vertically-integrated utilities to relatively small distribution-only systems. We are proud to serve approximately 5.1 million Texans across the state. Most of our members operate within the Electric Reliability Council of Texas (ERCOT) region, though several are located within either the Southwest Power Pool (SPP) or Midcontinent Independent System Operator (MISO) region. MOUs offer a long track record of stability, and we serve an essential role in providing secure and reliable power to the wholesale electricity markets in these regions, including ERCOT. Many of our member systems have been providing stable and reliable electric service to communities in Texas for over 100 years, and collectively, our members provide more than 13,800 MW of generation and maintain more than 8,500 miles of high-voltage transmission assets.

On August 28, Commissioner Glotfelty filed a memo, putting forward several policy proposals for broader discussion regarding the interconnection and cost treatment of DERs.¹ On September 9, 2024, Commission Staff posted the questions for comment, seeking responses by September 30, 2024 and reply comments by October 11, 2024. TPPA appreciates Commission Staff's work on the questions for comment. These responses are timely filed.

¹ Project No. 54224, Commissioner Glotfelty Memo (Aug. 28, 2024).
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I. General Comments

Defining distributed energy resource (DER), distribution resource, and distributed generation (DG) and the distinction between these terms. TPPA first notes that there is no single definition of a DER, distribution resource, or DG that has been adopted by the Commission for widespread use,² and as such, it can be difficult to discern what kinds of facilities the proposal would extend to. TPPA notes that DERs/distribution resources/DG can include utility-scale distributed generation and storage facilities as well as significantly smaller projects, including residential rooftop solar or vehicle-to-grid. At this stage, it is difficult to provide detailed feedback on the proposal without clear definitions. Before any formal rule proposal is published, TPPA recommends that the Commission provide a more exact definition of the types and scale of technology it would consider to be eligible for not only distribution resource interconnection allowances, but any cost allocation provisions that could be subject to change.

Larger Impacts. As TPPA has previously indicated,³ the Commission must carefully consider any effects that DERs could have on the market to ensure that they do not contribute to the early retirement of existing dispatchable generation, block the investment incentives for new dispatchable generation, create unrecoverable costs for transmission and distribution systems, or force an additional burden on residential customers in the event of firm load shed.

II. Response to Questions for Comment

Question 1: Can the Commission implement the proposed standard distribution resource interconnection allowance without explicit statutory language authorizing such an allowance?

For the purposes of these comments, TPPA will read the term “distribution resource,” as used in the Staff questions for comment, as synonymous with “DER.”

Currently, a DER is usually required to pay for all their costs to interconnect, including any updates the distribution service provider (DSP) needs to make to distribution facilities to facilitate the interconnection, which are recovered as an estimate at the start of the interconnection project through a Contribution in Aid of Construction (CIAC). As TPPA understands it, the proposed interconnection

² 16 Texas Administrative Code § 25.5(32) does provide a definition of “distributed resource,” but the capacity limits are described as “*generally* between one kilowatt and ten megawatts” (emphasis added), limiting the definition’s effectiveness at describing what is and what is not considered a distributed resource. TPPA also notes that this definition applies only to those projects that “provide[] advantages to the system, such as deferring the need for upgrading local distribution facilities.” If this is the type of resource expected to be covered by the allowance, it is unclear whether CIACs would ever be required. Even a uniform definition for storage remains elusive – recently, the Commission indicated that it uses “electric energy storage facility” and “energy storage resource” as non-synonymous terms. *See Texas Energy Fund In-ERCOT Generation Loan Program*, Project No. 55826, Order Adopting New 16 TAC §25.510 at 35 (Apr. 2, 2024).

³ Project No. 54224, Texas Public Power Association’s Response to Questions for Comment at 2 (Nov. 17, 2022).

allowance would instead require distribution providers to shoulder all interconnection costs that a DSP makes to their distribution facilities (up to \$1.5M), with any estimated exceedance recovered from the DER as a CIAC at the start of the interconnection project.

TPPA does not believe that the Commission has the authority to unilaterally implement such an allowance. Fundamentally, a state agency only has the powers and jurisdiction expressly given to it by the Legislature.⁴ While the Commission certainly has the powers reasonably necessary to fulfill its express obligations, “[a]n agency may not . . . exercise what is effectively a new power, or a power contradictory to the statute, on the theory that such a power is expedient for administrative purposes.”⁵ The Legislature is keenly aware of the growing presence of DERs, crafting several new laws in recent sessions relating to those facilities – including the Backup Power Package component of the Texas Energy Fund – but the allowance proposal appears to be a *sua sponte* idea to reallocate costs toward consumers that is not required to implement any legislative requirement or policy directive.

TPPA notes that the Commission has, historically, been reluctant to reallocate costs toward consumers without instruction from the Legislature. For instance, the Commission declined to increase the assessment rate for the Texas Universal Service Fund (TUSF) without explicit legislative authorization, with the Commissioners recognizing that such an increase would amount to a tax on customers:⁶

Chairman Walker: So, where I have landed, and I know it’s not the best, optimal choice, but I really do believe that this is something the Legislature needs to address, not that they don’t already have enough on their plates, but I think there is some underlying, fundamental issues and policy questions on this, and I, in good conscience, can’t more than double the rate at this point.

.... I just, in good conscience at this point, during something like the economic downturn we have, can’t implement the type of increase that this would require because I do view it as a tax. A pure and straight tax. And for any entity to double a tax during these times I think is not something I want to be putting my name on...

Commissioner D’Andrea: I am not, also with you, not willing. And I view this, raising this, then as a temporary measure because it affects a small number of working-class folks, really, is who you’re taxing to try and triage this thing, and so I’m not willing to do that. I think this is not a time when we should be raising taxes on people....

Commissioner Botkin: We’re in agreement on several points. I think the Legislature does need to address it. I understand it’s very complicated and

⁴ *Pub. Util. Comm’n v. City Pub. Serv. Bd of San Antonio*, 53 S.W.3d 310, 315-16 (Tex. 2001).

⁵ *Id.* at 316.

⁶ Open Meeting Tr., Agenda item 19 from 43:30-47:38 (June 12, 2020).

they have a lot of other things to do, but ultimately to make this program work right, it needs a bigger conversation than what we can do here....

While this decision to not increase the TUSF assessment rate was ultimately overturned by a court,⁷ that court focused on the Commission's statutory obligation to completely fund the TUSF, not the Commission's reluctance to increase taxes on consumers without explicit legislative instruction.

The Commission should exhibit similar reluctance toward this allowance proposal under the same logic. If the allowance proposal moves forward, consumers at large will be responsible for up to \$1.5M in interconnection costs for each and every new DER – **a pure and straight tax**. Further, this tax assessment is regressive, as the majority of the benefit of the interconnection will inure to the DER host in the form of lower energy consumption and lower consumption-based TDSP charges. Consequently, the distribution provider must collect revenues to cover these costs from customers that choose not to or who cannot afford to make the investments in this technology – such as low-income customers or renters. If the Commission believes that this is the correct approach, the Commission should allow the Texas Legislature – the duly elected representatives of the people who will bear that tax – to weigh in and authorize that new tax rather than implementing it on its own.

Question 2: What are the advantages and disadvantages of the proposed standard distribution resource interconnection allowance? Is a standard distribution resource interconnection allowance a viable option to move forward? If not, why?

Before the enactment of the transmission generation interconnection allowance contemplated under PURA § 35.004(d-1),⁸ the costs transmission service providers bore to update their transmission facilities to facilitate the interconnection of generation at a transmission level were uplifted to ratepayers through the postage stamp collection of transmission service costs. Now, only a portion of those costs are uplifted, with the remainder being the responsibility of the interconnecting transmission generator. In addition, loads are often required to pay for costs borne by the transmission and distribution service provider to facilitate the load's interconnection. Importantly, the overarching trend here is for private

⁷ *Tex. Tel. Ass'n v. Pub. Util. Comm'n of Tex.*, 653 S.W.3d 227 (Tex. App. 2022).

⁸ While TPPA recognizes that the allowance proposal stems from the newly-enacted generation interconnection allowance, TPPA also notes that the proposal fundamentally misinterprets the purpose of the generation interconnection allowance it seeks to mirror. As TPPA noted in its previous comments on that rulemaking (*Generation Interconnection Allowance*, Project No. 55566, Texas Public Power Association's Response to Staff Questions for Comment at 4 (Oct. 13, 2023)), the author of the bill that led to the statutory inclusion of a generation interconnection allowance was clear that he wanted to induce smart siting decisions, rather than reallocating costs. DERs, by their nature of connecting to local distribution systems, are not located far from load or existing facilities, and so the existing incentive is to locate close to load pockets.

investment to bear more risk, rather than having those costs subsidized by consumers. The allowance proposal would flip that trend on its head by socializing new and more costs among the public.

Question 3: At what amount should a standard distribution resource interconnection allowance be set? Should the applicability or amount of the allowance vary based on the size of the resource?

Consistent with its comments above, TPPA opposes the concept of a distribution resource interconnection allowance. At this time, TPPA does not provide feedback on the amount at which the allowance should be set nor the types and scale of distribution resources that would be eligible for the allowance.

Question 4: How should the interconnection costs covered by such an allowance be reallocated? What effects would this have on other customers?

As noted below, the costs covered by the allowance would be borne either by other customers of the DSP or all customers in ERCOT, either of which would result in a tax on consumers.

Question 5: Should a standard distribution resource interconnection allowance also apply in areas served by municipally owned utilities and electric cooperatives?

Question 6: If a standard distribution resource interconnection allowance should apply in areas served by municipally owned utilities and electric cooperatives, does the Commission need to develop a wholesale cost recovery mechanism to address the costs associated with this allowance? What factors should the Commission consider in developing such a mechanism?

TPPA answers these questions jointly. TPPA opposes the concept of a distribution resource interconnection allowance for any DSP for the reasons provided above, but we also further object to the proposal as specifically relates to MOUs. First, the Commission does not have the authority to set rates for distribution-only MOUs and the local governing body retains the authority to set rates for distribution service.⁹ More broadly speaking, state law requires MOUs to impose and collect charges that are sufficient to pay for all operating, maintenance, depreciation, replacement, improvement, and interest charges in connection with the utility system¹⁰ and to charge rates that are equal and uniform.¹¹

⁹ PURA § 40.004 limits the Commission to regulating wholesale transmission rates and services, while PURA § 40.055 reserves to the MOU the power to set all terms of access, conditions, and rates applicable to services provided, including nondiscriminatory and comparable rates for distribution service.

¹⁰ Tex. Gov't Code § 1502.057(a)(1).

¹¹ Tex. Gov't Code § 1502.057(b).

Second, the proposal may also conflict with other, more specific state laws. PURA § 35.037(h) provides that, for DG customers that provide retail grocery sales or food manufacturing or distribution for retail grocery sales, the MOU is empowered to recover all reasonable costs necessary for and directly attributable to the interconnection of the DG facility, including the reasonable costs of necessary system upgrades and improvements directly attributable to the DG facility.¹² Setting an interconnection allowance would conflict with a MOU's ability to recover these costs.

Third, many governing bodies of MOUs have passed line extension policies that specifically address the cost of distribution interconnections for both DERs and standard load interconnections within their jurisdictions. Those policies are reflective of the community needs and ensure a non-discriminatory approach to line extension costs. The allowance proposal would require overturning these locally-developed policies.

On an implementation front, the Commission's current DER policies apply statewide regardless of whether the DER is interconnected inside ERCOT, MISO, or SPP,¹³ but if the allowance is socialized among all DSPs, the proposal would seem to only function for DER interconnections within ERCOT, as a DSP in MISO or SPP would not be able to uplift its costs outside of their existing rate base. This would create unequal outcomes for DERs and DSPs. Moreover, the current method of socializing costs within ERCOT would not be appropriate for most MOUs, forcing the Commission to develop an entirely new process. While several MOUs currently have transmission rates approved by the Commission and are well-versed in the Transmission Cost of Service (TCOS) process, the vast majority do not. Implementing this proposal would require a new process that works for smaller, distribution-only utilities – including more than 50 MOUs – to uplift costs for recovery from all ratepayers in ERCOT.

If, however, the allowance would not be socialized and costs would be borne by individual DSPs, the allowance proposal would have unequitable effects and would be a severe burden on smaller MOUs. Requiring a small MOU that serves several thousand customers (or fewer) to bear \$1.5M in interconnection costs through an allowance would have a severe impact on that MOU's ability to carry out other critical work in maintaining the distribution network that serves its customers, potentially forestalling necessary reliability and resiliency upgrades.

¹² PURA § 35.037(h) (as added by SB 398, 87th R.S.)

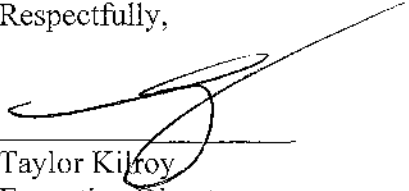
¹³ 16 TAC §§ 25.211 and 25.212.

III. Conclusion

TPPA appreciates the opportunity to submit these comments. As always, TPPA looks forward to working with the Commission, its staff, and the stakeholders on these important questions and this broader discussion in the coming months.

Dated: September 30, 2024

Respectfully,

A handwritten signature in black ink, appearing to read 'Taylor Kilroy', is written over a horizontal line.

Taylor Kilroy
Executive Director
Texas Public Power Association
(512) 472-5965
tkilroy@tppa.com

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**COST RECOVERY FOR SERVICE TO § PUBLIC UTILITY COMMISSION
DISTRIBUTED ENERGY RESOURCES § OF TEXAS**

EXECUTIVE SUMMARY OF TPPA'S RESPONSE TO QUESTIONS FOR COMMENT

- TPPA recommends that the Commission better define several interrelated terms, including distributed energy resource (DER), distribution resource (DR), and distributed generation (DG) as well as the distinction between these terms.
- TPPA does not believe that the Commission has the authority to implement a standard distribution resource interconnection allowance without explicit statutory authority to do so. TPPA also points to previous Commission decisions to not increase taxes on customers without direction from the Legislature.
- TPPA opposes the allowance proposal as it forces customers to bear the burden and risk of interconnecting, rather than private investment.
- The allowance proposal is specifically problematic for municipally-owned utilities (MOUs) for several reasons:
 - MOUs are statutorily empowered to set their own distribution rates, and the Commission is disallowed from setting those rates. The allowance proposal would conflict with this statutory regime.
 - MOUs are empowered to impose and collect charges that are sufficient to pay for the costs of the utility system and to charge rates that are equal and uniform. The allowance proposal, in allowing beneficiaries to avoid the full cost of interconnecting, would conflict with these provisions.
 - For DG customers that provide retail grocery sales or food manufacturing or distribution for retail grocery sales, the MOU is empowered to recover all reasonable costs necessary for and directly attributable to the interconnection of that DG customer. The allowance proposal would conflict with this statutory provision.
 - The allowance proposal would also require preempting local line extension policies that were crafted to address community needs.
 - If the allowance is intended to be socialized among several DSPs, it would likely only function for interconnections within ERCOT. If this is the case, distribution-only MOUs do not socialize any costs through the Transmission Cost of Service mechanism. The allowance proposal would likely require a new method of uplifting costs for more than 50 distribution-only MOUs, making implementation difficult.
 - Alternatively, if the allowance would not be socialized among DSPs, it would have inequitable effects on smaller MOUs by requiring them to shoulder millions of dollars in interconnection costs, which may create delays in needed reliability and resiliency upgrades.