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**Received - 2023-01-18 11:12:50 AM**

**Control Number - 54233**

**ItemNumber - 26**

**PROJECT NO. 54233**

**TECHNICAL REQUIREMENTS AND § PUBLIC UTILITY COMMISSION  
INTERCONNECTION PROCESS §  
FOR DISTRIBUTED ENERGY § OF TEXAS  
RESOURCES (DERs)**

**REPLY COMMENTS OF  
TEXAS ELECTRIC COOPERATIVES, INC.**

Texas Electric Cooperatives, Inc. (TEC) respectfully submits these reply comments in response to the Public Utility Commission of Texas (Commission) Staff’s (Staff) Discussion Draft for Proposed Changes to Chapter 16 Texas Administrative Code (TAC) §25.211 and §25.212.<sup>1</sup> TEC is the statewide association of electric cooperatives operating in Texas, representing its members except as their interests may be separately represented.<sup>2</sup> The request for comments directs reply comments to be filed by January 18, 2023. These reply comments are timely filed.

**I. Commission Jurisdiction**

As stated in TEC’s initial comments,<sup>3</sup> the Commission’s rules regarding the interconnection of on-site distributed resources do not apply to electric cooperative distribution systems.<sup>4</sup> That is because the Public Utility Regulatory Act (PURA)<sup>5</sup> expressly precludes the Commission from applying those rules to electric cooperatives and their distribution services and systems.<sup>6</sup> Rather, PURA gives electric cooperatives the exclusive jurisdiction to set all terms of access, conditions, and rates applicable to distribution services provided by electric cooperatives and to manage and operate their utility systems, including control over resource acquisition.<sup>7</sup> TEC agrees with the comments of the Texas Public Power Association (TPPA)<sup>8</sup> and CPS Energy (CPS)<sup>9</sup>

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<sup>1</sup> Staff Discussion Draft – Proposed Changes to §25.211 and §25.212 (Nov. 22, 2022).

<sup>2</sup> TEC’s 75 members include distribution cooperatives that provide retail electric utility service to approximately 5,000,000 consumers in statutorily authorized service areas that encompass more than half of the total area of the state. TEC’s G&T members generally acquire generation resources and power supply for their member distribution cooperatives and deliver electricity to them at wholesale.

<sup>3</sup> Comments of Texas Electric Cooperatives, Inc. (Jan. 6, 2023) (TEC Initial Comments).

<sup>4</sup> Current 16 Texas Administrative Code (TAC) § 25.211(a) (“The only part of this section that applies to electric cooperatives is subsection (o) of this section.”).

<sup>5</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001 – 66.016 (PURA).

<sup>6</sup> PURA § 41.004.

<sup>7</sup> PURA § 41.055(1), (6).

<sup>8</sup> TPPA's Response to Staff Discussion Draft (Jan. 6, 2023) (TPPA Initial Comments).

<sup>9</sup> CPS Energy's Initial Responsive Comments in Project No. 54233 (Jan. 6, 2023) (CPS Initial Comments).

to the extent they address jurisdictional points similar to those raised by TEC.<sup>10</sup> The Commission's jurisdiction over municipally owned utilities (MOU) is similarly limited.<sup>11</sup>

The legislature divided jurisdiction between electric cooperatives on one hand and the Commission on the other for important policy reasons. Electric cooperatives have historically served mostly rural areas.<sup>12</sup> Their roots are based in rural communities, which own and manage the electric cooperatives that serve them through a democratically elected board.<sup>13</sup> From the Panhandle to the Gulf Coast to the Piney Woods, their service territories vary widely in climate, weather threats, geography, size, and type of system and loads. When the legislature debated and passed Senate Bill 7 to restructure the Texas electric market in 1999, the nature of electric cooperatives and concern of increased rates in harder-to-serve rural areas were among the reasons the legislature exempted electric cooperatives from the market deregulation and Commission oversight applied to investor-owned utilities.<sup>14</sup> Those same policy concerns persist. They did not disappear with the advent of distribution connected generation and storage technology. Distributed generation existed then as it does today.<sup>15</sup>

If adopted as proposed, the discussion draft would violate PURA's carefully crafted legislative scheme and undermine electric cooperatives' ability to manage their systems consistent with their unique resources and circumstances. TEC recommends amending proposed §25.211 and §25.212 to clearly exempt electric cooperatives consistent with PURA.<sup>16</sup>

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<sup>10</sup> See CPS Initial Comments at 1-2 & n.2 ("It is also worth noting that the new draft rules also would apply to electric cooperatives in a manner well beyond the scope of the existing rules. The existing rules apply only in a very limited fashion to electric cooperatives. Yet, the new draft rules would apply to electric cooperatives in their entirety. Ironically, the draft rules seem to not fully comprehend their own scope because in parts they use phrases such as 'if a DSP or electric cooperative . . .,' which is nonsensical, as the term 'DSP' includes an electric cooperative under the Commission's rules. It appears that Staff has taken the existing rules and substituted DSPs in place of electric utilities and modified the rules to fit DERs broadly. Such has resulted in the nonsensical application at times of two sets of requirements for DSPs and electric cooperatives, even though electric cooperatives are DSPs under the Commission's rules. The existing rules 25.211 and 25.212 correctly distinguish electric utilities and electric cooperatives, because electric cooperatives are not electric utilities under PURA or the Commission's rules. But, by modifying the rules to apply to DSPs rather than electric utilities, yet retaining existing language regarding electric cooperatives, Staff has created nonsensical and contradictory provisions in the rules regarding electric cooperatives.").

<sup>11</sup> PURA § 40.004.

<sup>12</sup> <https://texas-ec.org/about/history/>

<sup>13</sup> Tex. Util. Code §§ 161.065, .071.

<sup>14</sup> PURA § 41.004; House Research Organization, Bill Analysis at 33, Tex. S.B. 7, 76th Leg., R.S. (1999) ("Rural areas, the typical market for co-ops, can be more expensive to serve because more equipment is needed to reach a smaller population per square mile. Because costs of service are higher, rural residents fear that for-profit companies could "cherry-pick" larger business customers, ignoring residential consumers and leaving farm and ranch families with even higher bills. Electric cooperatives should be exempt from electric utility restructuring.").

<sup>15</sup> See, e.g., PURA § 39.101(b)(3) (identifying on-site distributed generation; enacted in 1999).

<sup>16</sup> See TEC Initial Comments.

In addition, while §25.212 largely places obligations on DERs, as opposed to DSPs, to the extent that §25.212 could be interpreted to apply to electric cooperatives as DSPs, TEC recommends a similar exemption from applicability for electric cooperatives be applied to §25.212. PURA prevents the Commission from placing obligations on electric cooperatives with respect to distribution interconnections. Similarly, §25.212 must also consider the potential for federal preemption. Thus, in response to other commenters' calls for uniform standards across the state, TEC recommends the following sentence be added to the end of §25.212(a):

“Any obligations or requirements in this section applicable to DSPs do not apply to electric cooperatives.”

TEC also recommends that §25.212(a) begin with “Except to the extent preempted by federal law, . . .”

## **II. Cost Allocation**

TEC opposes the comments of Hunt Energy Network, L.L.C. (HEN), Jupiter Power LLC (Jupiter) and Broad Reach Power LLC (Broad Reach) (collectively, Joint Storage Commenters) relating to cost allocation.<sup>17</sup> Cost allocation issues were separated from the technical aspects of the current DER rulemaking, as those issues are being addressed in Project No. 54224.<sup>18</sup> As such, the Joint Storage Commenters' proposed amendments to §25.211 regarding cost recovery issues are beyond the scope of the current rulemaking. To the extent cost allocation issues are considered in this rulemaking, the Commission should consider the comments of TEC in Project No. 54224 and reject Joint Storage Commenters' proposal to escape monthly charges paid by all other users of distribution facilities.<sup>19</sup> TEC also asks the Commission to consider the numerous comments filed by other market participants in Project No. 54224 that similarly assert DERs should bear the capital and/or operations and maintenance costs a DSP incurs to serve them and that such costs should not be recovered through TCOS.<sup>20</sup> “In the same way that a gas generator must pay for the fuel used

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<sup>17</sup> HEN Comments to Staff Discussion Draft at 8 – 9 (Jan. 6, 2023) (Joint Storage Initial Comments).

<sup>18</sup> See *Cost Recovery for Service to Distributed Energy Resources (DERS)*, Project No. 54224.

<sup>19</sup> *Cost Recovery for Service to Distributed Energy Resources (DERS)*, Project No. 54224, Comments of Texas Electric Cooperatives, Inc. (Nov. 17, 2022).

<sup>20</sup> See, e.g., Project No. 54224, Joint TDU's Response to Commission Staff's Questions for Comment (Nov. 17, 2022); Texas Public Power Association's Response to Questions for Comment (Nov. 17, 2022); Office of Public Utility Counsel's Response to Staff's Request for Comments (Nov. 17, 2022); CPS Energy's Initial Responsive Comments in Project No. 54224 (Nov. 17, 2022); Lower Colorado River Authority's Response to Questions for Comment (Nov. 17, 2022).

in generation, the DESR must pay for the energy they store and all other relevant charges for distribution service.”<sup>21</sup>

### **III. Industry Workshops**

As the DER rulemakings progress, especially in regard to technical concerns, TEC agrees with the comments of CenterPoint and Oncor that it would be beneficial for Commission Staff to host multiple workshops to gather and consider information from industry experts.<sup>22</sup>

### **IV. Conclusion**

TEC appreciates the opportunity to provide these comments and looks forward to working with Staff and the other stakeholders in this project.

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<sup>21</sup> Project No. 54224, Comments of Texas Electric Cooperatives, Inc. at 5.

<sup>22</sup> Oncor Electric Delivery Company LLC’s Initial Comments on Staff Discussion Draft Proposed Changes to §§25.211 and 25.212 at 3 (Jan. 6, 2023); Comments of CenterPoint Energy Houston Electric, LLC at 1 (Jan. 6, 2023).

Dated: January 18, 2023

Respectfully submitted,



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## Executive Summary

TEC provides the following executive summary of its reply comments regarding the discussion draft:

- TEC supports the Comments of TPPA and CPS Energy as they relate to the jurisdictional limitations of the Commission over the distribution systems of MOUs and electric cooperatives. Both MOUs and electric cooperatives should remain exempt from proposed §25.211 and §25.212, except where specifically authorized by PURA.
- TEC opposes the comments of Joint Storage Commenters requesting exemptions from monthly charges related to the use of the distribution system.
- TEC supports the comments of Oncor and CenterPoint requesting technical workshops be held prior to the adoption of new rules.