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TEXAS ENERGY FUND

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

TCPA COMMENTS IN RESPONSE TO STAFF QUESTIONS

Texas Competitive Power Advocates (“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 electricity market. TCPA members 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 electricity service to consumers. TCPA members provide almost fifty percent of the total generating capacity and eighty-two percent of the gas generation capacity in ERCOT. TCPA members have invested billions of dollars in the state and employ thousands of Texans.

I. GENERAL COMMENTS

TCPA¹ appreciates the actions taken by the Public Utility Commission of Texas (“PUC” or “Commission”) to implement the provisions of Senate Bill (“SB”) 2627 as expeditiously as

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 members 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 own more than 55,000 MW of 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, Hull Street Energy, LS Power,

possible. While the Texas Energy Fund (“TEF”) cannot be created unless and until the accompanying constitutional amendment is approved by voters, it is prudent to take these initial steps toward developing the rules of the program at this time to set clear expectations for potential investors in dispatchable power for the ERCOT grid. TCPA appreciates the Commission’s efforts to reduce regulatory uncertainty because investment in new generation depends upon forward market signals that cannot be meaningfully ascertained until market policies are reasonably settled and understood.

II. RESPONSES TO THE QUESTIONS INCLUDED IN STAFF’S SEPTEMBER 19, 2023, WORKSHOP AGENDA

1. “How should the PUC evaluate creditworthiness?”

Public Utility Regulatory Act (“PURA”) § 34.0107 establishes the Commission’s management objectives for the TEF, which include exercising the reasonable care, skill, and caution that a prudent investor would exercise. TEF loans made under PURA § 34.0104 are a form of investment and must be managed accordingly to protect the state’s resources. In furtherance of that goal, TCPA believes that TEF funding should ensure that supported projects are viable and not speculative. Thus, it is vital that default risks to the TEF’s investment are minimized by appropriately scrutinizing applications to ensure the creditworthiness of potential developers.

Rockland Capital, Shell Energy North America, Talen Energy, Tenaska, TexGen Power, Vistra, and WattBridge. NRG is filing separate comments.

The statute already provides several additional requirements that go beyond creditworthiness and could further assist the Commission in allocating resources for evaluation of creditworthiness. For example, criteria outlined in PURA § 34.0104(c)(1)(A)-(C) [regarding the applicant's (A) quality of services and management; (B) efficiency of operations; and (C) history of electricity generation operations in this state and this country] could be utilized as an initial screen to determine which applicants are eligible for further evaluation of creditworthiness and further evaluation of other statutory criteria in PURA § 34.0104(c)(1)(D)-(F). Only those applicants that can meet the PUC's expectations for these criteria should then have the totality of their application considered. This will both make the program more efficient and protect the state's investment by weeding out statutorily unqualified applicants. Some of this information should be objectively available in the Commission's own records—for example, existing Power Generation Company ("PGC") registrations, generating capacity reports, weatherization attestations, and emergency operations plans.

Specific to the creditworthiness evaluation, PURA § 39.0104(c)(1)(G) already provides a number of specific criteria that the Commission must consider: total assets, total liabilities, net worth, and major credit rating agency credit ratings. These criteria must be evaluated through the lens of "ability to repay the loan on the terms established in the loan agreement." Aside from these specific statutory requirements, TCPA supports the Commission relying upon the expertise of its awarded administrator to evaluate creditworthiness in accordance with existing commercial lending standards.

Similarly, TCPA suggests that in the event a resource supported by the loan and/or bonus program is sold or transferred, the new owner/operator must, at a minimum, meet the Commission's current creditworthiness qualifications for the program(s).

2. “How should the PUC interpret the term ‘primarily’ in PURA § 34.0106(b)(1) when considering generation associated with private use networks and industrial loads?”

The TEF seeks to support the addition of up to 10,000 megawatts (“MW”) of dispatchable generation onto the ERCOT grid. To best meet this goal, TCPA believes that any entities receiving loans or grants should be building for the exclusive purpose of providing energy to the wholesale market with any other use being incidental (such as the generation facility’s auxiliary loads). This approach gives most effect to all of the provisions contained in SB 2627 and has precedent with the definition of “Exempt Wholesale Generator” (“EWG”) in federal jurisdictions that requires that the EWG be engaged “exclusively” in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.”² Note that this necessarily excludes backup generators that may passively be settled at the prevailing market price or participate in demand response programs like ERS, but are not qualified to participate in ERCOT’s Security Constrained Economic Dispatch (“SCED”). However, depending on the makeup of such facilities, they may be eligible for subsidization as a Texas Power Promise Backup Power Package.

Conversely, if the Commission is inclined to include facilities used to both serve the ERCOT market and an industrial load or private use network (“PUN”), the PUC should clarify in rule that at least 51% of the facility’s output must be consistently offered into the wholesale market (e.g., not “primarily” used for industrial or PUN purposes), and only the portion of MW that will be consistently offered into the wholesale market are eligible for loans and completion bonus grants to ensure compliance with PURA § 34.0106(d): “Each facility for which a loan or grant is provided

² 18 CFR § 366.1

under Section 34.0104 or 34.0105 must participate in the ERCOT wholesale electricity market.”
(emphasis added, note that this would also disqualify generators that are not capable of SCED
dispatch from program eligibility). For example, if an industrial customer were to construct 150
MW of generation capacity, but consistently offer only 76 MW into the wholesale market (50.6%),
then the project would not qualify, but if 77 MW were consistently offered in (51.3%) then at most
only 51.3% of the project cost could be considered for a loan and/or bonus.

To be clear, the added complexity of the alternative approach described above would make it
harder for the Commission to meaningfully evaluate applications, add significant compliance
monitoring burdens, and statute seems to convey a strong preference to *not* have state funds
supporting industrial loads and PUNs. TCPA is not advocating for the proration option, rather
suggesting it as a framework if the Commission determines that “primarily” should be read more
liberally.

**3. “What timing challenges will applicants encounter when applying for a loan under
this program?”**

TCPA appreciates the urgency of the process contemplated for the TEF as well as the
Commission’s recognition that there may be real-world challenges posed by trying to finance and
build new generation on the expedited timeline envisioned in SB 2627. Primarily is that the
ERCOT market currently suffers from a cloud of policy uncertainty. The Legislature, the
Commission, and ERCOT each have understandably taken highly active interests in electricity
market policies since Winter Storm Uri, and many of those policy changes are still being either
refined or implemented. Until those implementation activities are further along and investors can
digest those changes into their forward market outlooks (as well as observe reduced policymaker
interest in making further changes), the timing of re-establishing policy certainty in the ERCOT

market will be a significant challenge to any generation developer (regardless of whether they are supported by subsidized loans/grants or not).

Setting those concerns aside, it may be difficult as a practical matter to have applications approved and funds dispersed in time for a facility to be interconnected by June 1, 2026, as required to receive the \$120,000 per MW completion bonus. If resources are relying on both the completion bonus and the loan program subsidy to support project economics, this will create a narrow window beyond which those projects are no longer financially viable. Such projects would likely need at least notice of selection for the loan program but more likely some initial loan funding by the end of 2024. If loan applications are not accepted by the Commission until June 1, 2024, then applications would have to be approved and funds dispersed within roughly six months. This will likely be a challenge for the Commission given they will probably be evaluating multiple applications while also receiving new applications from market participants that did not already have eligible projects under development.

Similarly, depending upon when the final rules are promulgated, developers and investors may only have a window of a few months to make decisions on whether to risk billions of dollars on long-term investments in the ERCOT market. One potential option to streamline the process would be to break the application process into two stages: one to screen creditworthiness and other required or adopted standards for applicants, and a second one to review specific applications for project financing. This approach could help to cut down the time needed both for applicants to prepare and for the Commission to review specific project applications, while also limiting the pool of submitted project applications to only applicants that meet or exceed the minimum qualifications.

4. “What circumstances should the PUC consider when determining extenuating circumstances that justify an extension of the deadlines in PURA § 34.0105(f)?”

Another timing challenge was noted during the September 21st workshop. It will likely be difficult to procure some of the equipment necessary for construction in time to meet certain statutory deadlines due to global supply chain issues. Many industries have experienced supply chain constraints in recent years, exacerbated by the COVID-19 pandemic and shifting trade policies. These constraints are not uniform in their impact, so PUC should consider whether and when these types of delays are “extenuating circumstances” as contemplated in SB 2627 and, therefore, justify extending the completion deadline on a case-by-cases basis.

III. ADDITIONAL COMMENTS REGARDING THE TEF

TCPA encourages the PUC to keep the TEF program as simple as possible with a focus on the availability and reliability of generation assets. Providing clarity to developers and investors will be pivotal in attracting new investment into ERCOT. Significant uncertainty or perception that the criteria might change throughout the course of the program could keep investors on the sideline.

Further, while the low interest rates and potential completion bonuses from the TEF could be helpful tools in attracting development of new dispatchable resources, investors continue to highlight the need for regulatory certainty in the ERCOT market itself. To that end, TCPA urges the Commission to continue its efforts to implement the existing policies enacted in Senate Bill 3, House Bill 1500, and other recent legislation as quickly as reasonably possible and then allow the market to stabilize and respond.

IV. CONCLUSION

TCPA appreciates the opportunity to submit comments on the TEF and will continue working with the Commission towards its successful implementation. We remain committed to seeking solutions that will help maintain a competitive market and result in a reliable and robust ERCOT grid for years to come.

Dated: October 13, 2023

Respectfully submitted,



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Executive Summary

- The TEF's low interest rates and potential completion bonuses could be helpful tools in attracting investment in new dispatchable generation resources in ERCOT. TCPA appreciates the Commission's concurrent efforts to reduce regulatory uncertainty because investment in new generation also depends upon forward market signals that cannot be meaningfully ascertained until market policies are reasonably settled and understood.
- To protect the state's investment in new generation resources, TEF funds should only be used on commercially viable projects with sufficiently scrutinized developers. TCPA suggests the PUC implement an initial screening mechanism that will weed out those applications which place TEF's at an unnecessary risk of default.
- To meet SB 2627's goal of adding up to 10,000 MW of dispatchable generation to ERCOT, TCPA believes that any entities receiving loans or grants should be building for the exclusive purpose of providing energy to the wholesale market with any other use being incidental (such as the generation facility's auxiliary loads).
- The aggressive timelines in SB 2627 may be a challenge to meet. Therefore, TCPA encourages the PUC to streamline the application process wherever possible. For example, breaking the application process into two stages – one to screen creditworthiness and other required or adopted standards for applicants, and a second one to review specific applications for project financing – could improve review times.
- Despite best efforts, global supply chain issues could prevent successful construction of projects by the statutory deadlines. To the extent that these delays are outside of developers control, the PUC should consider if these types of delays are "extenuating circumstances" as contemplated by SB 2627 and, therefore, justify extending the completion deadline on a case-by-cases basis.