



## **Filing Receipt**

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**PROJECT NO. 55826**

<b>TEXAS ENERGY FUND IN-ERCOT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>GENERATION LOAN PROGRAM</b>	<b>§</b>	
	<b>§</b>	<b>OF TEXAS</b>

**CALPINE CORPORATION'S COMMENTS**  
**ON THE PROPOSAL FOR PUBLICATION OF NEW 16 TAC § 25.510**

Calpine Corporation ("Calpine") welcomes the opportunity to provide feedback on the Public Utility Commission of Texas ("Commission") Proposal for Publication ("PfP") establishing the Texas Energy Fund ("TEF") In-ERCOT Generation Loan Program.

**I. RESPONSE TO COMMISSION QUESTIONS**

**1. Should the rule require registration as a power generation company with the commission as a condition for eligibility to receive a loan? Why or why not?**

Yes, as specified in Calpine's comments submitted in response to this inquiry in Project No. 55812. Calpine incorporates its comments by reference herein.

**2. Should the rule require registration as a Generation Resource with ERCOT as a condition for eligibility to receive a loan? Why or why not?**

Yes, as specified in Calpine's comments submitted in response to this inquiry in Project No. 55812. Calpine incorporates its comments by reference herein.

**3. How should the commission evaluate PURA § 34.0106(b)'s prohibition against providing a loan to an electric generating facility that will be used primarily to serve an industrial load or private use network?**

The Commission should evaluate the prohibition in PURA § 34.0106(b) as specified in Calpine's comments submitted in response to this inquiry in Project No. 55812. Calpine incorporates its comments by reference herein.

## II. COMMENTS ON THE PROPOSAL FOR PUBLICATION

Calpine recommends the following revisions to the proposed rule:

### **(b)(2) – Definition of “Commercial operations date”**

The definition of COD should be consistent as between the In-ERCOT Generation Loan Program rule and the Completion Bonus Grant rule for the sake of clarity and consistency.<sup>1</sup>

### **(c)(2)(B) – Eligibility: Upgrades to existing electric generating facilities that result in a net increase of at least 100 MW of capacity for each facility with an output that can be controlled primarily by forces under human control.**

PURA § 34.0104(a) allows the Commission to use TEF funds for loans to finance upgrades to existing dispatchable electric generating facilities providing power for the ERCOT region that result in a *net increase of at least 100 MWs* of capacity for each facility. The rule should specify that “net increase” in capacity is measured using a baseline derived from the facility’s historical operations – namely, the facility’s average High Sustained Limit (“HSL”) in the year prior to a TEF loan application being filed. The Commission should not measure the “net increase” in capacity using the facility’s “installed capacity” rating. This is because the installed capacity rating is the maximum power that a generating unit can produce during normal sustained operating conditions as specified by the equipment manufacturer.<sup>2</sup> The HSL, however, is a capacity value, established by a generation facility’s Qualified Scheduling Entity (“QSE”) that describes the maximum sustained energy production capability of the facility,<sup>3</sup> and therefore best reflects the

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<sup>1</sup> Currently, the In-ERCOT Generation Loan Program PIP ties COD to the completion of ERCOT qualification and testing requirements, while the Completion Bonus Grant PIP ties COD to completion of the ERCOT commissioning process.

<sup>2</sup> ERCOT Report on the Capacity, Demand and Reserves (“CDR”) in the ERCOT Region, 2024-2033 at 7 (Dec. 8, 2023) ([https://www.ercot.com/files/docs/2023/12/07/CapacityDemandandReservesReport\\_Dec2023.pdf](https://www.ercot.com/files/docs/2023/12/07/CapacityDemandandReservesReport_Dec2023.pdf))

<sup>3</sup> ERCOT Nodal Protocols § 2.1 defines the HSL of a Generation Resource as the “limit established by the Qualified Scheduling Entity (QSE), continuously updated in Real-Time, that describes the maximum sustained energy production capability of the Resource.”

*actual generation capability* of a generation resource. Calculating the “net increase” in capacity for loan eligibility purposes by considering the practical, real-world increase in a generation facility’s output, rather than the increase in potential output when conditions are to the equipment manufacturer’s standards, is most in line with the intent of SB2627 to incentivize real investment in dispatchable generation upgrades.

For example, an existing dispatchable generation facility may have an installed capacity rating per ERCOT’s Capacity, Demand, and Reserves (“CDR”) report of 400 MW, but due to age or other factors, may be experiencing maintenance issues that result in an average HSL limit of 200 MW. This means that the plant is actually limited, on average, to a maximum output of 200 MW despite its CDR-specified installed capacity rating, and absent investment in the facility to resolve the maintenance problems, will remain limited. If an investor in the facility were to refurbish the plant’s equipment such that the new average HSL of the plant is 600 MW, the “net increase” in capacity should be 400 MW rather than 200 MW.

**(c)(4)(D) – Activities that are not eligible for a loan: Operation that primarily serves an industrial load or PUN**

Consistent with Calpine’s comments made in Project No. 55812 addressing Commission Question No. 3, the Commission should generally not consider generators that are part of a PUN configuration, or that mainly serve an industrial load, for a TEF loan; or the Commission should at least prioritize those applications below generators that deliver all of their capacity to the ERCOT system. In many instances, a PUN generator or generator serving a dedicated industrial load is in the service of primarily serving its dedicated load and therefore cannot also primarily serve the ERCOT wholesale markets. Where this is not true, the Commission should clarify what else it might mean to “primarily serve an industrial or PUN load.” Calpine reiterates from its comments made in Project No. 55812 that a power generation facility should not be considered as

“primarily serving an industrial or PUN load” if it exports its full capacity to the ERCOT grid while also being party to an offtake agreement with an industrial load.<sup>4</sup>

**(d)(1) – Notice of Intent to Apply**

As a preliminary matter, Calpine respectfully urges that the Notice of Intent to Apply, the Application itself, and all other ancillary documents required to be submitted by an applicant to receive funds under the loan program be: (1) developed with enough time for meaningful stakeholder comment and feedback; and (2) finalized and published with sufficient time for applicants to prepare and submit the forms within the time prescribed by the rule.

In addition to the elements contained in subsection (d)(1)(A) – (E), the Notice of Intent to Apply should include the following additional information which will demonstrate to the Commission that the applicant has contributed an adequate and reliably calculated upfront dollar investment in the generation facility. This information will assist in demonstrating that the applicant has sufficient capital to cover the 40% of projected costs not covered by the loan, and in demonstrating the viability of the proposed facility and construction timeline. The facility owner/applicant should also have demonstrated site control to ERCOT and submitted an attestation of compliance with the Lone Star Infrastructure Protection Act under the ERCOT Planning Guide if the below additional factors are included:

- (F) the ERCOT-assigned generation interconnection request number (“GINR”) for each electric generating facility;
- (G) a copy of the completed ERCOT Screening Study; and
- (H) a copy of the fully executed full interconnection study (“FIS”) agreement.

**(d)(2) – Information to be submitted concurrently with Notice of Intent to Apply**

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<sup>4</sup> In such an arrangement, the generator is exporting its power to the grid for market consumption while the dedicated offtaker buys it back pursuant to the terms of a contract. The full power of the facility is used to maintain overall ERCOT system frequency and is therefore primarily used in service of the grid.

The rule should additionally require a showing of creditworthiness at the time of Notice of Intent submission. This will assist the Commission in evaluating an applicant's financial fitness and access to financing for the 40% of anticipated project costs not covered by the TEF loan.

**(e) – Application Requirements and Process**

**(4)(B) – Evidence of Applicant's prior experience**

The Commission should require a specific requisite showing of an applicant's experience with siting, permitting, financing, constructing, commissioning, operating, and maintaining dispatchable electric generating facilities to provide reliable electric service in competitive energy markets. Establishing as many objective and quantitative thresholds as possible will assist with efficient evaluation of applications and will ensure that each facility receiving TEF loan funds will be developed and operated by an entity having a base level of subject matter experience on which the Commission can expect *reliable* development and operation of the resource. One such threshold could be that an applicant must demonstrate having at least fifteen years' experience in each of these categories, excluding third-party contractors or vendors.

**(4)(C)(i) – Evidence of creditworthiness, including an equity commitment letter demonstrating the ability to fund the necessary project equity (40 percent of the remaining estimated cost of construction) plus the required three percent construction escrow deposit amount).**

In addition to this equity commitment letter, the rule should require an applicant to submit documentation demonstrating the ability to fund, through equity capital, an additional amount to address contingencies not included in the initial estimated cost of construction. This is because initial cost projections do not include unforeseen increased costs that may be associated with project development at various stages of construction, but from Calpine's development experience in ERCOT, are commonplace occurrences. The additional amount should either be 5% of overall

estimated project costs or another amount to be determined on a case-by-case basis, as approved by the Commission, based on a quantitative risk analysis. In either instance, the applicant should be required to confirm that the contingency funds are liquid, immediately available, and unrestricted funds dedicated exclusively to development of the dispatchable generation facility for the purpose of mitigating the facility's performance risk.

**(5)(C)(xi) - A detailed financial forecast of cash available for debt service, covering a period equal to the repayment period of the loan, including sources of revenue and an annual operating and maintenance budget**

Similar to the above comment on contingency costs, the rule should require an applicant to include financial forecasting of cash available for emergency conditions in addition to the currently required financial forecasting. This is particularly important in the wake of Winter Storm Uri, during which emergency conditions resulted in many generators incurring unforeseen astronomical expenses in ERCOT resulting from inflated gas prices and other related cost increases. The Commission should give preference to applicants who can demonstrate that they possess sufficient financial resources to address emergency circumstances such as those extreme weather events or other potential emergencies. This will ensure for the public that a TEF loan recipient will truly be ready and available to perform in the event of an emergency, both from an equipment and financial perspective.

**(6) – A description of estimated costs.**

Calpine requests clarity on what the Commission intends to be included in subpart (e)(6)(H) – “interest rate protection” costs. Additionally, the rule should specify what sorts of documentation may be provided to adequately prove up each category of cost described in subsection (e)(6). Without such guidance, the Commission may be left without any “check” to verify the accuracy of this cost information. The rule should also include a process to confirm an

applicant's projected costs within some margin of accuracy, beyond which an applicant may not receive a loan unless the applicant can fund the excess amounts through equity, or otherwise without reliance on TEF loan distributions. This will help ensure accountability and exercise of due diligence in applicants' efforts to estimate total project costs. However, the Commission should be permitted to consider exigent circumstances resulting in increased project costs above the amounts disclosed in the application and should have discretion to continue an applicant's eligibility, if appropriate, should an applicant/recipient exceed the established margin of error.

**(f)(1) Mandatory Evaluation Criteria**

**(A)(i), (ii), and (iii) – Quality of service and management based on applicant's prior history, efficiency of operations as shown by applicant's existing generation resources, and history of electricity generation operations**

Calpine reiterates its prior comments with respect to subsection (e)(4)(B) as relates to the evaluation criteria in subsection (f)(A)(i) – (iii). The rule should specify the minimum number of years' experience that an applicant has in each of these categories to make a sufficient showing to qualify for a TEF loan or should otherwise specify some objective threshold.

**(A)(vii) – Evidence of creditworthiness and ability to repay the loan on the terms established in the loan agreement**

Calpine notes for the Commission that a consideration of creditworthiness under this criterion should look beyond the given facility for which a loan is requested to the applicant more broadly as an asset owner. An applicant should be required to show it has sufficient credit to operate in the ERCOT wholesale market and not just to obtain a loan. If a facility that has received loan proceeds should default on its obligations to ERCOT, it would also undoubtedly default on the terms of its loan.

**(f)(2) Permissive Evaluation Criteria**



In addition to the factors listed in (f)(2)(A) – (J), the Commission should also consider an applicant’s ability to request a loan draw after having declared COD. If a developer represents in its loan application that it will not make a request for loan disbursements until it has achieved COD, the applicant should be given first priority for a loan award. This prioritization will ensure that the first loan recipients have sufficient access to capital to cover the requisite 40% of anticipated construction costs, plus the three percent deposit, plus contingencies as otherwise addressed in these comments while also providing an incentive to undertake construction of new dispatchable generation in line with the intent of SB2627. This prioritization would also serve to protect taxpayers’ interests by increasing the likelihood that the applicant will not default on its loan payment obligations.

An additional permissive evaluation criterion the Commission should consider in prioritizing loan applications is the extent to which an applicant can demonstrate firm fuel supply capabilities. The Commission should prioritize loan applications that can ensure firm fuel procurement (such as through onsite storage or through firm fuel contracts) over those that cannot, as this is consistent with the goal of SB2627 to ensure increased *reliable* dispatchable generation in the ERCOT region. One possible method of demonstrating firm fuel supply capabilities would be for an applicant to demonstrate the facility’s ability to qualify to provide firm fuel supply service (“FFSS”) as contemplated in ERCOT Nodal Protocols Section 8.1.1.2.1.6.

#### **(h) Loan Terms and Agreements**

Calpine requests clarity from the Commission on whether the agreements listed in subsection (h) will be developed and negotiated on an applicant-by-applicant basis, or if standard form agreements will be developed through the Commission’s rulemaking or workshop process wherein stakeholders will have an opportunity to provide feedback.

### **(1)(A) – Performance Covenant in the Credit Agreement**

The Commission should expound on what it means to “meet an EAF performance of 50 for all hours during the term of the loan” and on the definition of EAF as “the fraction of a given operating period in which a generating unit is available to produce electricity without any outages or equipment deratings.” For example, does “operating period” indicate a 15-minute interval, a one-hour period, or some other measurement? Does an EAF performance of 50 mean that the generating unit was available without outage or derate for 50% of a given operating period?

### **(1)(B) – Construction and Term Loan Facility**

**(i) – (ii) Upon initial closing of the credit agreement, the borrower may request an initial loan disbursement for up to 60 percent of qualifying and documented incurred expenses that are part of the total estimated cost of construction for the project, as verified by the commission... The borrower will contribute the required equity commitment of no less than 40 percent to such construction and commissioning costs as the borrower makes draws during the construction loan period.**

Prior to the initial loan disbursement, the applicant should be required to demonstrate that 40% of the total estimated cost of construction have been funded by the applicant. Such funds should go into the Project first, prior to the applicant receiving funds from the loan program. This will further ensure the applicant’s creditworthiness. Calpine has proposed a language revision in the attached redlines.

**(iii) For all loan disbursements, the borrower will be required to submit a construction drawdown certificate in the form specified by the commission. The commission will review the construction drawdown certificate and, upon approval, will instruct the Texas Treasury Safekeeping Trust Company to disburse funds.**

The Commission should utilize an independent third party subject matter expert in the field of dispatchable generation project development engineering to assist in developing a form drawdown certificate that addresses all necessary conditions precedent to a construction draw

event. This will reduce the administrative burden on the Commission and facilitate a more expedient review of these drawdown certificates by saving Commission resources, as the form should require certification by an industry expert who will review for substantive compliance with the form's requirements prior to executing the certificate.

**(1)(F) – Collateral – to secure the indebtedness under the credit agreement, the borrower will grant the commission a first priority security interest in all of its existing and after-acquired real and personal property related to the facility and in all of the outstanding equity interests of the borrower in the facility**

To the extent the Commission determines that a PUN generator or one serving industrial load is eligible to receive a TEF loan, the rule should specify how the collateral requirement relates to this eligibility. For example, would this first priority security interest somehow be limited to the generation component of the overall PUN? A PUN generator generally serves only one customer. If the dedicated customer were to go bankrupt, how would this concept of first rights be applied?

**(1)(G) – Change of ownership and control requiring the Commission's approval**

A change of ownership and control should not require the Commission's approval, as this sort of approval would not otherwise be required for a generating facility's change in ownership outside of the TEF loan context.<sup>5</sup> It is also not administratively necessary, since, as a registered PGC, the generating facility would be required to submit an application to amend its PGC registration should a change of control result in a change of corporate parent.<sup>6</sup> If, however, the Commission deems this additional approval necessary, the Commission should establish an administrative approval process for such application, including the use of a Commission-approved form with a specified timeline for approval. This will provide regulatory certainty to applicants

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<sup>5</sup> Excepting those circumstances wherein PURA § 39.158 might be implicated, though such is rarely the case for a loan since the lender does not typically take any ownership and control of the generation resource.

<sup>6</sup> 16 TAC § 25.109(f)(1).

and streamline the review process, resulting in administrative efficiency and a preservation of Commission resources.

#### **(1)(H) – Compliance and audit covenants**

The debt covenants discussed in this section of the proposed rule should be consistent with similar covenants generally accepted to be the market standard in similar generation project financing transactions. Further, the rule should specify that the submission of annual financial audits, credit assessments, and electric generating facility performance assessments throughout the term of the loan are confidential and not subject to disclosure under Chapter 552, Government Code. The audit requirements should be consistent with the Completion Bonus Grant program.

#### **(6) Events of default**

It would be consistent with current market practice in private debt financing transactions for the rule to qualify that any of the events referenced in subsections (6)(B) - (E) is only an event of default to the extent it poses a material adverse effect to the generation project's operations or to the financial condition of the project. Absent a material adverse effect, the Borrower would simply be in breach of these terms but not in default of the entire agreement, and some lesser ramification would be appropriate until the breach is cured, such as a suspension of distributions. Even in the event of a default, the rule should include a specified "cure period" in which the Borrower can remedy the default without penalty. The Commission should have discretion to waive a breach or default, if it deems appropriate to do so, without penalty to the Borrower. Additionally, if the Commission asserts an event of default, the credit agreement should provide, consistent with market practice, that the loan recipient party claimed to be in default may have the fact of default submitted to mandatory arbitration with an independent third-party arbiter with subject matter expertise. The existence of any of the enumerated conditions in subsection (6)(B) –

(E) should not result in imposition of “strict liability” default. Accordingly, “failure to perform” under PURA § 34.0108 should not be interpreted to mean that any breach of a debt covenant, representation, or warranty that does not result in a material adverse effect constitutes an event of default.

**(j) No contested case or appeal**

If the Commission denies a loan application, or finds an application deficient, the applicant should be permitted to supplement the application to cure any deficiency or to refile an application in the future. The Commission’s denial of an application should not be with prejudice. This supplementation process need not take the form of a contested case proceeding.

**III. CONCLUSION**

Calpine appreciates this opportunity to present our views on this very important matter and will remain engaged as this rule develops. We will make available representatives to discuss these positions if helpful to the Commission.

Respectfully submitted,

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**PROJECT NO. 55826**

**TEXAS ENERGY FUND IN-ERCOT  
GENERATION LOAN PROGRAM**

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**PUBLIC UTILITY COMMISSION  
  
OF TEXAS**

**EXECUTIVE SUMMARY OF CALPINE CORPORATION'S COMMENTS  
ON THE PROPOSAL FOR PUBLICATION OF NEW 16 TAC § 25.510**

- Please see Calpine's comments submitted in response to Questions 1-3 in Project No. 55812.
- (b)(2) - The definition of COD should be consistent as between the TEF loan program and the completion bonus grant rules.
- (c)(2)(B) – “Net increase” should mean the difference between the generating facility’s average High Sustained Limit (“HSL”) in the year preceding the loan application and the expected average HSL resulting from the increased capacity.
- (d)(1)(A) – (E) - the Notice of Intent to Apply (“NOI”) should also include certain additional information specified in these comments demonstrating that the applicant has contributed an adequate and reliably calculated upfront dollar investment in the generation facility.
- (d)(2) - The rule should require a showing of creditworthiness at the time of NOI submission.
- (e)(4)(B) and (f)(1)(A)(i)–(iii) – The rule should include specific, objective assessment criteria.
- (e)(4)(C)(i) – An applicant should be required to submit documentation demonstrating the ability to fund through equity capital additional contingency amounts.
- (e)(5)(C)(xi) - An applicant should be required to submit financial forecasting of cash available for emergency conditions.
- (e)(6) - The rule should specify what sorts of documentation may be provided to adequately prove up each category of cost to ensure accuracy and accountability.
- (f)(1)(A)(vii) - An applicant should be required to show it has sufficient credit to operate in the ERCOT wholesale market and not just to obtain a loan.
- (f)(2) - the Commission should give priority to an applicant who states an ability to request a loan draw *after* having declared COD and to an applicant who can demonstrate firm fuel capabilities, such as by demonstrating the ability to qualify to provide FFSS.
- (h) – The rule should clarify whether the agreements will be developed and negotiated on an applicant-by-applicant basis, or if standard form agreements will be developed.
- (h)(1)(A) – The rule should further clarify what it means to “meet an EAF performance of 50 for all hours during the term of the loan” and on the definition of EAF.
- (h)(1)(B) – An applicant should be required to contribute 40% of estimated project costs prior to receiving a loan disbursement. The Commission should utilize an independent third party subject matter expert to assist in developing a form drawdown certificate.
- (h)(1)(F) - The rule should specify how the collateral requirement relates to a PUN generator’s eligibility.
- (h)(1)(G) - A change of ownership and control should not require Commission approval.
- (h)(1)(H) – Information submitted for compliance and audit covenants should be confidential.
- (h)(6) – The (h)(6)(B) - (E) events should not be a “default” absent a material adverse effect.
- (j) - If the Commission denies an application, or finds an application deficient, the applicant should be permitted to supplement the application or refile an application in the future.

1           **§25.510. Texas Energy Fund In-ERCOT Generation Loan Program.**

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3       (a)   **Purpose.** The purpose of this section is to implement Public Utility Regulatory Act  
4           (PURA) §34.0104, which establishes requirements and terms for loans to finance  
5           dispatchable electric generating facilities within the ERCOT region.  
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7       (b)   **Definitions.** The following words and terms, when used in this section, have the following  
8           meanings unless the context indicates otherwise.

9           (1)   **Borrower** -- An applicant to the Texas Energy Fund who is successfully awarded  
10           a loan under this section.

11          (2)   **Commercial operations date** -- The date on which the electric generating facility  
12           has completed all qualification testing administered by ERCOT and is approved for  
13           participation in the ERCOT market, as identified by ERCOT in the applicable  
14           monthly generator interconnection status report.  
15

16       (c)   **Eligibility.**

17           (1)   An electric utility other than a river authority is not eligible for a loan under this  
18           section.

19           (2)   The following activities are eligible for a loan under this section:

20               (A)   New construction of an electric generating facility capable of generating at  
21                      least 100 megawatts (MW) of capacity with an output that can be controlled  
22                      primarily by forces under human control.

(B) Upgrades to existing electric generating facilities that result in a net increase of at least 100 MW of capacity for each facility with an output that can be controlled primarily by forces under human control. “Net increase” means the increase in an electric generating facility’s average High Sustained Limit (“HSL”) resulting from the upgrades as measured between the average HSL of the generating facility in the year preceding a loan application and the expected average HSL of the generating facility resulting in the year immediately following installation of the upgrades. “High Sustained Limit” has the meaning as described in the ERCOT Nodal Protocols.

(3) In addition, a proposed facility must:

- (A) be designed to interconnect and provide power to the ERCOT power region;
- (B) be designed to participate in the ERCOT wholesale market; and
- (C) be eligible to interconnect to the ERCOT region based on the attributes of the owners of the facility, according to the requirements in the Lone Star Infrastructure Protection Act (codified at Texas Business and Commerce Code § 117.002).

(4) The following activities are not eligible for a loan under this section:

- (A) Construction or operation of an electric energy storage facility.
- (B) Construction or operation of a natural gas transmission pipeline.
- (C) Any planned facility that met the planning model requirements necessary to be included in the capacity, demand, and reserves report issued by ERCOT before June 1, 2023.



(D) Operation that primarily serves an industrial load or private use network.

(d) **Notice of intent to apply.**

(1) At least 60 days before submitting an application under this section, an applicant must submit a notice of intent to apply in the manner prescribed by the commission. Information submitted to the commission as part of the notice of intent to apply is confidential and not subject to disclosure under Chapter 552, Government Code.

The notice of intent to apply must include:

(A) The applicant's corporate name and the name of the electric generating facility for which it seeks a loan;

(B) The anticipated generation capacity of each electric generating facility proposed to be financed with a loan under this section;

(C) The anticipated commercial operations date of each electric generating facility;

(D) The amount of the loan requested;

(E) For each electric generating facility, information demonstrating that the applicant is capable of financing project-related costs not supported by a loan awarded under this section;

(F) The ERCOT-assigned generation interconnection request number ("GINR") for each electric generating facility;

(G) A copy of the completed ERCOT Screening Study; and

(H) A copy of the fully executed full interconnection study ("FIS") agreement.

(2) Concurrent with the notice of intent to apply, the applicant must separately file a letter with the commission stating the applicant's corporate name and the MW capacity that the requested loan amount will finance and must separately file documentation demonstrating sufficient creditworthiness to finance 40 percent of the estimated cost of construction.

(e) **Application requirements and process.** A loan application must be submitted in the form and in the manner prescribed by the commission. Information submitted to the commission as part of the loan application process is confidential and not subject to disclosure under Chapter 552, Government Code. An application must include each of the requirements detailed in this subsection. An applicant may withdraw an application at any time while under commission review.

(1) The applicant's corporate name and the name of the electric generating facility for which it requests a loan.

(2) Amount of the loan requested.

(3) The anticipated generation capacity of the electric generating facility proposed to be financed with a loan under this section.

(4) Applicant information.

(A) A copy of any information submitted to ERCOT regarding the applicant's attestation of market participant citizenship, ownership, or headquarters;

(B) Evidence of the applicant's prior experience with siting, permitting, financing, constructing, commissioning, operating, and maintaining

dispatchable electric generating facilities to provide reliable electric service in competitive energy markets;

(C) Evidence of the applicant's creditworthiness, including:

(i) An equity commitment letter demonstrating the ability to fund the necessary project equity (40 percent of the remaining estimated cost of construction) plus the required three percent construction escrow deposit amount and documentation demonstrating the ability to fund through equity capital an additional amount to address contingencies not included in the initial estimated cost of construction in an amount of 5% of overall estimated costs or an amount determined by the Commission based on a quantitative risk analysis.

(ii) Financial statements, including statements of the applicant's total assets, total liabilities, net worth, and credit ratings issued by major credit rating agencies.

(5) Project information.

(A) A narrative explanation that details how the facility will contribute to reliably meeting peak winter and summer load in the ERCOT region, including the project's plans for ensuring adequate fuel supplies and preparations for compliance with §25.55 of this title (relating to Weather Emergency Preparedness);

(B) Demonstration of the project's eligibility under subsection (c) of this section;

(C) Project-specific information that will allow the commission to determine and evaluate the viability and attributes of the electric generating facility, including:

- (i) A table with the resource operation attributes, including nameplate capacity, seasonal net maximum sustainable ratings during winter and summer, cold and hot temperature start times, and the original equipment manufacturer's estimated equivalent availability factor (EAF) calculation in North American Electric Reliability Corporation (NERC's) generating availability data system (GADS);
- (ii) A statement indicating whether the electric generating facility will serve an industrial load or private use network, and if so, a description of how the electric generating facility will primarily serve and benefit the ERCOT bulk power system given its relationship to an industrial load or private use network, and whether full generation output would be available to the ERCOT bulk power system during any Energy Emergency Alert, and a copy of any information submitted to ERCOT regarding private use network net generation capacity availability;
- (iii) A one-line diagram of the proposed project, if available;
- (iv) Evidence of site control, consistent with applicable ERCOT planning guide requirements;
- (v) An up-to-date phase 1 environmental site assessment, conducted in accordance with standards identified in 40 C.F.R. Part 312;

- (vi) A description of the electrical interconnection plan, including evidence that the proposed project is in the interconnection queue with ERCOT and has completed the ERCOT screening study; a copy of the full interconnection study with the interconnecting transmission service provider, if completed; and a copy of the executed standard generation interconnection agreement;
- (vii) A description of the fuel and water supply arrangements, including copies of applicable fuel and water supply agreements, if available, and evidence of receipt of necessary water rights and applicable permits;
- (viii) A description of the operations and maintenance staffing plan, organizational structure, and operating programs and procedures for the proposed project, including copies of operations and maintenance agreements, if available, and organizational charts;
- (ix) A list of all required environmental, construction, and operating permits with current approval status;
- (x) A description of the air emissions compliance plan, including evidence of receipt of any required air emissions credits;
- (xi) A detailed financial forecast of cash available for debt service, covering a period equal to the repayment period of the loan, including sources of revenue, ~~and~~ an annual operating and maintenance budget, and of cash available for emergency conditions; and

(xii) A proposed project schedule with anticipated dates for major project milestones, such as execution of the standard generation interconnection agreement, completion of the full interconnection study, start date for the engineering of the project, construction start date, submission of applicable registration documents with ERCOT and the commission, energization (backfeed date), initial synchronization and parallel operation with the ERCOT grid, and commercial operations date.

(6) **Estimated cost.** A description of estimated project costs, which includes:

- (A) Development, construction, contingency, and capital commitments required for the project to reach completion;
- (B) Permitting-related costs;
- (C) Development fees;
- (D) Land acquisition and lease costs;
- (E) Legal fees;
- (F) Up-front fees;
- (G) Commitment fees;
- (H) Interest rate protection;
- (I) Ancillary credit facility fees;
- (J) Title insurance; and
- (K) Interconnection costs.

An applicant's description of estimated project costs is subject to verification through a process to be established by the commission. Should an

applicant's estimated project costs exceed a margin of error to be determined by the commission, the commission may deem an applicant ineligible to receive loan disbursements unless the applicant is able to fund the excess projected costs through equity or otherwise without reliance on Texas Energy Fund loan distributions.

(f) **Evaluation Criteria.** The commission will approve or deny an application on the criteria and evaluation outlined in this subsection.

(1) The commission will evaluate an application under this section based on:

(A) The applicant's:

- (i) Quality of services and management, as shown by the applicant's prior history of electricity generation in this state and this country and proposed organizational structure for the project for which the applicant seeks a loan;
- (ii) Efficiency of operations, as shown by the applicant's existing generation resources and proposed operational attributes of the project for which the applicant seeks a loan;
- (iii) History of electricity generation operations in this state and this country;
- (iv) Resource operation attributes, including fuel type and heat rate, seasonal net maximum sustainable rating, resource ramp rate, and capacity factor;
- (v) Ability to address regional and reliability needs;

(vi) Access to resources essential for operating the facility for which the loan is requested, such as land, water, and reliable infrastructure, as applicable;

(vii) Evidence of creditworthiness and ability to repay the loan on the terms established in the loan agreement; and

(B) The nameplate generation capacity and total estimated costs of the facility for which the loan is requested.

(2) The commission may also consider the following criteria:

(A) The suitability of the facility site to support the construction, operation, and maintenance of the proposed facility and to provide sufficient access to utilities;

(B) The sufficiency of the various construction and equipment supply contracts necessary to construct the facility;

(C) The outcomes of planned tests of the resource's operating capabilities;

(D) The commercial feasibility of the facility's construction schedule;

(E) The facility's proposed environmental permits and commitments;

(F) The reasonableness of the applicant's forecast of non-fuel operating and maintenance costs;

(G) The methodology used to construct the facility's financial forecast of projected net revenues;

(H) The sufficiency of the applicant's proposed sources of equity to cover the costs of the facility not funded through a loan provided under this section;



(I) Whether the facility can achieve the applicant's long-term EAF and capacity projections; and

(J) The basis for the total projected construction costs, including project contingencies;

(K) An applicant's ability to request all loan draws after having declared commercial operation of the facility. If an applicant makes this commitment in its application, the commission will give priority to approval of the application over other applications which do not make this commitment; and

(L) An applicant's ability to demonstrate firm fuel supply capabilities for the proposed facility. If an applicant is able to ensure firm fuel procurement for the facility, such as by demonstrating the facility's ability to qualify to provide Firm Fuel Supply Service under the ERCOT Protocols, the commission will give priority to approval of the application over other applications which do not demonstrate firm fuel supply capabilities.

(g) **Loan Structure.** An approved loan will have the following characteristics:

(1) Consist of no more than 60 percent of the estimated cost of the electric generating facility to be completed;

(2) Be the senior debt secured by the electric generating facility to be completed;

(3) Have a repayment term of 20 years;

(4) Be payable on a pro rata basis starting on the third anniversary of the estimated commercial operations date of the electric generating facility as stated on the application; and

(5) Be structured as senior debt secured by a first lien security interest in the assets and revenues of the project.

(h) **Loan Terms and Agreements.** A borrower must enter into one or more agreements with the commission that includes the terms of this section.

(1) **Credit agreement**—the primary agreement between the borrower and the commission that will govern the terms and conditions under which the commission will loan funds to the borrower. The credit agreement will include the following key terms:

(A) **Performance covenant**—the electric generating facility financed by the loan must meet an EAF performance of 50 for all hours during the term of the loan. EAF is the fraction of a given operating period in which a generating unit is available to produce electricity without any outages or equipment deratings.

(B) **Construction and term loan facility**—a senior secured first lien construction and term loan facility will be advanced to the borrower in one or more drawings upon the closing date of the credit agreement and will continue until the project achieves commercial operation and the construction loan is converted to a term loan. Amounts repaid during the

term of the construction loan, if any, may not be re-borrowed by the borrower following the construction loan's conversion to a term loan.

(i) Upon initial closing of the credit agreement and upon the borrower demonstrating contribution of no less than 40 percent of estimated project construction and commissioning costs, the borrower may request an initial loan disbursement for up to 60 percent of qualifying and documented incurred expenses that are part of the total estimated cost of construction for the project, as verified by the commission.

(ii) During the term of the construction loan, the borrower may request loan disbursements for up to 60 percent of the documented incurred project construction and commissioning costs. ~~The borrower will contribute the required equity commitment of no less than 40 percent to such construction and commissioning costs as the borrower makes draws during the construction loan period.~~

(iii) For all loan disbursements, the borrower will be required to submit a construction drawdown certificate in the form specified by the commission. The commission will review the construction drawdown certificate and, upon approval, will instruct the Texas Treasury Safekeeping Trust Company to disburse funds.

(iv) Upon the commercial operations date of the facility and fulfillment of any other conditions precedent, the construction loan will convert

to an amortizing term loan applicable to the total disbursements to the borrower.

(C) Equity capital contributions—the commission will verify the borrower’s required equity capital contributions (40 percent of the estimated capital cost of the project).

(D) Interest—interest on the loan amounts disbursed under the credit agreement will accrue at a fixed annual rate of three percent.

(E) Voluntary prepayment—the borrower may voluntarily prepay the total loan amount under the credit agreement in whole or in part at any time without premium or penalty.

(F) Collateral—to secure the indebtedness under the credit agreement, the borrower will grant the commission a first priority security interest in all of its existing and after-acquired real and personal property related to the facility and in all of the outstanding equity interests of the borrower in the facility.

~~(G) Change of ownership and control—a change of ownership and control occurs if greater than 50 percent of the equity interest in the project is sold to a third party. The borrower and the third party must submit an application for change of ownership and control that meets the requirements of subsections (c) and (e) of this section. A change of ownership and control will require the commission’s approval.~~

(H) Compliance and audit covenants—the credit agreement will include debt covenants requiring the borrower to meet all statutory requirements for loan

1 application eligibility and a debt covenant requiring that the borrower  
2 submit annual financial audits, credit assessments, and electric generating  
3 facility performance assessments throughout the term of the loan. Annual  
4 financial audits, credit assessments, and electric generating performance  
5 assessment submitted through the term of loan are confidential and not  
6 subject to disclosure under Chapter 552, Government Code. If the borrower  
7 also serves an industrial load or private use network, the borrower must also  
8 submit an annual accounting showing that the majority of the output of the  
9 electric generating facility served the ERCOT bulk power system during the  
10 performance year. This annual accounting is confidential and not subject to  
11 disclosure under Chapter 552, Government Code.

12 (2) **Depository agreement**—an agreement between the borrower and commission that  
13 will give the commission, as lender, control over the borrower's deposit accounts  
14 and securities accounts to perfect the commission's security interest in those  
15 accounts.

16 (3) **Security agreement**—an agreement between the borrower and the commission  
17 that will give the commission, as lender, the right to take control of and transfer all  
18 material project assets in the event of a default on the credit agreement, subject to  
19 the applicable procedures and approvals identified in PURA §34.0108.

20 (4) **Pledge agreement**—an agreement between the borrower and the commission that  
21 will create a security interest in the equity interests of the project in favor of the  
22 commission as the senior secured party.

(5) **Deposit agreement**—an agreement between the borrower and the commission in which the borrower will agree to a deposit described in subsection (i) of this section.

(6) **Events of default**—the borrower must agree to specified events of default, which (with respect (B) – (E) below) if such event has a Material Adverse Effect as described in the Credit Agreement, include:

(A) Failure to pay principal, interest, or other amounts due;

(B) Breach of covenants in any agreement;

(C) Inaccuracy of representations in any agreement;

(D) Bankruptcy or insolvency of the borrower; and

(E) Abandonment.

(7) **Remedies for events of default**—the borrower must agree to the remedies described in PURA §34.0108 following an event of default if such default is not cured within a reasonable time as determined by the commission.

(i) **Deposits.**

(1) The borrower must deposit in an escrow account held by the Texas Comptroller of Public Accounts an amount equal to three percent of the estimated cost of the project for which the loan is provided. The borrower must deposit the required funds before the initial loan amount is disbursed.

(2) The borrower may not withdraw the deposit from the escrow account unless authorized by the commission.

(A) For deposits related to the construction of new facilities, subject to commission authorization, the borrower may withdraw the deposit funds

from the escrow account if the facility for which the loan was provided is interconnected in the ERCOT region:

(i) before the fourth anniversary of the date the initial loan funds were disbursed; or

(ii) after the fourth anniversary but before the fifth anniversary of the date the initial loan funds were disbursed, if the commission finds that extenuating circumstances caused the delay.

(B) For deposits related to upgrades to existing facilities, subject to commission authorization, the borrower may withdraw the deposit funds from the escrow account if the facility for which the loan was provided is completed:

(i) before the third anniversary of the date the initial loan funds were disbursed; or

(ii) after the third anniversary but before the fourth anniversary of the date the initial loan funds were disbursed, if the commission finds that extenuating circumstances caused a delay in the completion of the project.

(C) For the purpose of this subsection, interconnection occurs when the electric generating facility is physically connected and able to inject energy into the ERCOT region.

(3) Upon the occurrence of an event that entitles the borrower to withdraw its deposit, the borrower will file a notice of satisfaction with the commission stating that the borrower requests the return of the deposit. The notice must state:

(A) The event that entitles the borrower to withdraw the deposit;

(B) The date of interconnection or initial loan disbursement, as applicable; and

(C) A detailed statement of extenuating circumstances, if any, that support the borrower's request for a later withdrawal of the deposit.

(4) The commission will evaluate each notice of satisfaction to determine whether the borrower is entitled to withdraw its deposit. If the borrower demonstrates that it has satisfied the requirements for withdrawal, then the commission will instruct the comptroller to return the deposit to the borrower. If the commission determines that withdrawal is not authorized, then it will instruct the comptroller to transfer the deposit to the Texas Energy Fund.

(j) **No Contested Case or Appeal.** Neither an application for a loan nor a request for withdrawal of a deposit is a contested case. Commission decisions on a loan application or request for withdrawal of deposit are not subject to motions for rehearing or appeal. This prohibition on contested cases or appeals does not preclude an applicant from submitting a subsequent application upon being denied a loan, or from supplementing an application deemed deficient by the commission.

(k) **Expiration.** This section expires September 1, 2050.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 30TH DAY OF NOVEMBER 2023 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS**



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**ADRIANA GONZALES**