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OPEN MEETING COVER SHEET

MEMORANDUM AND PROPOSED ADOPTION ORDER

MEETING DATE: March 21, 2024

DATE DELIVERED: March 11, 2024

AGENDA ITEM NO.: xx

CAPTION: Project No. 55826 – *Texas Energy Fund In-ERCOT Generation Loan Program*

DESCRIPTION: Memo and Proposed Adoption Order

Public Utility Commission of Texas

Memorandum

TO: Chairman Thomas Gleeson
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson

FROM: Allison Fink, Rules and Projects

DATE: March 11, 2024

RE: Project No. 55826 – Texas Energy Fund In-ERCOT Generation Loan Program

Attached, please find a copy of Commission Staff's recommended adoption order for Project No. 55826, *Texas Energy Fund In-ERCOT Generation Loan Program*, scheduled for consideration at the March 21, 2024 open meeting.

If adopted, this order will create new 16 Texas Administrative Code §25.510, relating to the Texas Energy Fund (TEF) In-ERCOT Generation Loan Program. New §25.510 will implement Public Utility Regulatory Act §§34.0104, 34.0106, and 34.0108, created by Senate Bill 2627 as enacted by the 88th Texas Legislature (R.S.). The new rule will establish procedures for applying for a loan for construction of dispatchable electric generation facilities within the ERCOT region, evaluation criteria, and terms for repayment. The new rule will also specify performance standards that will be included in the terms of the loan, to which a loan recipient must adhere.

Commission Staff recommends adoption of the attached order.

PROJECT NO. 55826

TEXAS ENERGY FUND IN-ERCOT § PUBLIC UTILITY COMMISSION
GENERATION LOAN PROGRAM § OF TEXAS
§

(STAFF RECOMMENDATION)

ORDER ADOPTING NEW 16 TAC §25.510

1 The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code
2 (TAC) §25.510, relating to the Texas Energy Fund (TEF) In-ERCOT Generation Loan Program. The
3 commission adopts this rule with changes to the proposed text as published in the December 15, 2023
4 issue of the *Texas Register* (48 TexReg 7267). New §25.510 implements Public Utility Regulatory
5 Act (PURA) §§34.0104, 34.0106, and 34.0108, created by Senate Bill (S.B.) 2627 as enacted by
6 the 88th Texas Legislature (R.S.). The new rule will establish procedures for applying for a loan
7 for construction of dispatchable electric generation facilities within the ERCOT region, evaluation
8 criteria, and terms for repayment. The new rule will also specify performance standards that will
9 be included in the terms of the loan, to which a loan recipient must adhere.

10

11 The commission received comments on the proposed rule from Advanced Power, Brownsville
12 Public Utilities Board (BPUB), Calpine Corporation (Calpine), Competitive Power Ventures Inc.
13 (CPV), City Public Service Board (CPS Energy), Drax Group, Electric Reliability Council of Texas
14 Inc. (ERCOT), Golden Spread Electric Cooperative Inc. (Golden Spread), Grid Resilience in Texas
15 (GRIT), Hunt Energy Network LLC (HEN), Lower Colorado River Authority (LCRA), LS Power

1 Development LLC (LSP), NRG Energy Inc. (NRG), Shell Energy North America (US) LP (Shell
2 Energy), the Sierra Club, Targa Resources LLC (Targa), Texas Competitive Power Advocates
3 (TCPA), Texas Electric Cooperatives Inc. (TEC), the Texas Oil & Gas Association (TXOGA), the
4 Texas Public Power Association (TPPA), Texas Industrial Energy Consumers (TIEC), USA Com-
5 pression Partners LLC (USA Compression), Vistra Corp. (Vistra), Wartsila North America Inc.
6 (Wartsila), and WattBridge Texas LLC (WattBridge).

7

8 TCPA requested a public hearing, which was held on January 25, 2024. The following entities of-
9 fered oral comments: Calpine, CPS Energy, Enchanted Rock, HEN, LCRA, LSP, NRG, Sierra Club,
10 Targa, TCPA, TIEC, TPPA, Vistra, Wartsila, and WattBridge.

11

12 *Note on Definition of Entities*

13 The following terms are used in this order. “Applicant” refers to the entity applying to the In-ERCOT
14 Generation Loan Program under §25.510. “Corporate sponsor” refers to the corporate parent entity
15 of an applicant. Use of this term accommodates a scenario in which a project-specific corporate entity
16 is established to own a newly built facility after the loan application process. If a project entity is
17 formed just prior to the loan application process and therefore lacks history, the credit and experience
18 of the corporate sponsor may be considered.

19

20 *Duties of TEF Loan Administrator and Commission Staff*

21 The commission will evaluate applications for TEF funding with the assistance of commission
22 staff and the commission’s TEF administrator. The TEF administrator will be responsible for
23 assessing each application for completeness, providing commission staff with recommendations

1 for funding according to the requirements of PURA §§34.0104 and 34.0106 and the evaluation
2 criteria listed in §25.510, and conducting due diligence on each application to gauge the feasibility
3 of each proposal. Commission staff will review the TEF administrator's recommendations and,
4 again relying on the program's evaluation criteria, will provide recommendations for approval to
5 the commission. The commission will approve an application in consideration of these recommen-
6 dations, the statutory requirements, and the criteria listed in §25.510.

7

8 *Evaluation Criteria Preferences*

9 The TEF administrator's review will assess the extent to which an applicant has thoroughly ad-
10 dressed each of the evaluation criteria enumerated in §25.510. An applicant's response to criteria
11 related to electric generation service history and to financial attributes, such as financial modeling,
12 creditworthiness, and risk management strategies, will garner the closest scrutiny. For example,
13 an applicant demonstrating more extensive and relevant generation service experience will receive
14 a more favorable application assessment. Similarly, applicants proposing to use a larger ratio of
15 equity to debt relative to other applications will also achieve a more favorable evaluation. Appli-
16 cations proposing financial structures with corporate guarantees of TEF project debt will also result
17 in a more favorable evaluation.

18

19 Although §25.510(f)(1)(A)(iii) establishes as an evaluation criterion the history of generation op-
20 erations in Texas and the United States, a lack of experience in either location will not disqualify
21 an applicant from receiving a TEF loan. Additionally, applicants proposing financial structures
22 that rely on various forms of debt for the non-TEF portion of the funding will be considered, but
23 preference will be given to applications with equity at the project level. More complex capital

1 structures, such as those with multiple tiers of creditors, may require negotiated intercreditor agree-
2 ments that can extend time to completion, resulting in a lower score.

3

4 ***Public Comments***

5 The commission invited interested parties to address three questions related to the eligibility require-
6 ments of the proposed rule.

7

8 *1. Should the rule require registration as a power generation company (PGC) with the com-
9 mission as a condition for eligibility to receive a loan? Why or why not?*

10 Among commenters that favored registration as a PGC, there were differing views as to the timing of
11 the registration. Sierra Club suggested requiring registration as a PGC prior to applying for a TEF
12 loan. WattBridge, HEN, Drax Group, NRG, LSP, and TCPA suggested requiring registration as a
13 PGC prior to loan disbursement but opposed requiring registration at the time of application. Wartsila
14 recommended adding this requirement as a condition to receive the loan but did not specify whether
15 PGC registration should be a condition for eligibility to apply. HEN, Shell Energy, NRG, LSP, and
16 TCPA suggested PGC registration should be received by the commercial operations date (COD) of
17 the generator that is the subject of the loan application per §25.109, relating to Registration by Power
18 Generation Companies and Self-Generators, and continuously maintained for eligibility.

19

20 TIEC and Calpine suggested that registration should not be required prior to applying for or receiving
21 TEF funding. However, TIEC stated that a loan recipient should be required to register prior to gen-
22 erating energy as required by PURA and commission rules.

23

1 Targa did not oppose a PGC registration requirement if the commission desires applicants for the loan
2 program to be subject to the regulatory requirements for PGCs.

3
4 TEC, CPS Energy, TPPA, BPUB, GRIT, TXOGA, Targa, and LCRA opposed a requirement to reg-
5 ister as a PGC, because this would exclude municipally owned electric utilities (MOUs) and electric
6 cooperatives. TXOGA suggested that eligibility should be based on new construction or upgrades of
7 100 megawatts (MW) or more of dispatchable generation, not a company's scope of business. GRIT
8 stated that SB 2627 does not include a requirement to register as a PGC and applying it would poten-
9 tially discriminate against certain generating facilities without regard for the facilities' potential con-
10 tributions to the reliable generation of electricity for the ERCOT region.

11
12 *Commission Response*

13 **The commission agrees with commenters who recommended requiring an applicant to register**
14 **as a PGC prior to receipt of awarded loan funds. PURA §39.351 requires a person to register**
15 **as a PGC prior to generating electricity in the ERCOT region. Therefore, it is appropriate to**
16 **require PGC registration for awarded entities, but not require registration as a condition of**
17 **application on the chance that the commission rejects an applicant's proposal.**

18
19 **However, the commission also agrees with TEC, CPS Energy, TPPA, BPUB and LCRA, who**
20 **stated that requiring an applicant to register as a PGC would exclude MOUs, electric coopera-**
21 **tives, and river authorities. The commission modifies the rule at (h)(1)(G) to allow an exception**
22 **to PGC registration for those three types of entities.**

1 **The commission disagrees with TXOGA’s recommendation to limit eligibility requirements to**
2 **only the scale of the project. PGC registration is required for all entities other than MOUs,**
3 **electric cooperatives, and river authorities, notwithstanding upgrades to existing facilities or**
4 **new construction for the reason noted above. The commission also disagrees with GRIT be-**
5 **cause PGC registration is required for a person prior to generating electricity in the ERCOT**
6 **region as discussed above.**

7

8 *2. Should the rule require registration as a Generation Resource (GR) with ERCOT as a con-*
9 *dition for eligibility to receive a loan? Why or why not?*

10 Shell Energy, Sierra Club, BPUB, CPS Energy, and TPPA supported requiring registration with ER-
11 COT as a GR. Wartsila and Vistra recommended adding this requirement as a condition to receive
12 the loan but did not specify whether it should be a condition for eligibility to apply.

13

14 WattBridge, HEN, Calpine, NRG, LSP, and TCPA opposed requiring registration as a GR with ER-
15 COT at the time of application for a TEF loan. Instead, these parties argued, registration timeline
16 requirements should be consistent with existing ERCOT protocols. Specifically, HEN argued that
17 some applicants might move forward with a project only if the project receives a loan from the TEF.
18 LCRA and TIEC also asserted that registration should be required consistent with existing ERCOT
19 protocols.

20

21 Targa did not oppose a GR registration requirement if the commission intends to make loan applicants
22 subject to ERCOT's GR requirements. However, Targa commented that the commission should rec-
23 ognize that a GR that serves critical natural gas infrastructure may need to remain available to serve

1 co-located critical load during an energy emergency, consistent with existing commission rule re-
2 quirements and House Bill 3648 and S.B. 3, both enacted by the 87th Texas Legislature (R.S.).

3
4 GRIT opposed a requirement to register as a GR, arguing that such a requirement is improperly nar-
5 row given the much broader eligibility criteria in the statute. GRIT suggested that resources that are
6 registered as Settlement Only Distribution Generators (SODGs), Private Use Networks (PUNs) with
7 dispatchable generation, or GRs with ERCOT should be eligible to receive a TEF loan.

8
9 TXOGA, Drax Group, and TEC opposed a requirement to register as a GR.

10
11 *Commission Response*

12 **In order for a generation facility to provide energy and ancillary services to the ERCOT system,**
13 **be available for reliability unit commitment, and make energy offers, the facility must be reg-**
14 **istered with ERCOT as a GR. The commission finds that by describing loan-eligible projects**
15 **as both dispatchable and primarily in service of the ERCOT system under PURA §34.0104(a)**
16 **and §34.0106(b)(1), the most appropriate ERCOT asset registration type is GR.**

17
18 **The commission modifies §25.510(h) to require an applicant that is awarded a TEF loan to**
19 **register the facility as a GR in the normal course of the ERCOT commissioning process. This**
20 **requirement will ensure that these units can be available to ERCOT in the most efficient way.**

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

4 TIEC recommended that eligibility of a “facility” under PURA §34.0106 should be determined by
5 comparing the industrial site’s net dependable capacity of generation to the maximum non-coincident
6 peak (NCP) demand of the co-located load. Any new, excess capacity of 100 MW or more should
7 be eligible for TEF participation on a pro-rata basis, according to TIEC’s recommendation.

8 Wartsila agreed with TIEC, noting that excess capacity co-located with an industrial facility or PUN
9 would be exported to the grid for market consumption. Therefore, that capacity would not be used
10 “primarily to serve” the industrial facility or PUN.

11
12 Drax Group argued that serving additional load behind the meter should not preclude eligibility for
13 the TEF loan program provided that 100 MW capacity requirement for ERCOT is met.

14
15 GRIT recommended that projects with excess dispatchable generation capacity within PUNs and re-
16 sources behind an industrial customer’s meter be eligible to participate in the loan program, provided
17 that the dispatchable generation is primarily available for delivery to the ERCOT grid. GRIT also
18 supported TIEC’s comments filed under Project No. 54999, in advance of the September 21st work-
19 shop, which stated that there are companies considering building on-site dispatchable generating fa-
20 cilities and may oversize those facilities if the excess capacity were eligible for TEF loans.

1 LCRA recommended that a facility serving an industrial load or PUN be eligible for a loan if 100
2 MW of new capacity is dedicated to ERCOT. LCRA stated that if this criterion is met, the facility
3 does not “primarily serve” the industrial load or PUN and is therefore eligible.

4
5 LSP recommended the commission evaluate “dual-use projects” based on energy, not on capacity.

6
7 Calpine commented that for a generator serving industrial load or within a PUN to qualify, it must
8 always have 100 MW of capacity available for ERCOT wholesale markets, according to PURA
9 §34.0104(a). Calpine expressed concern that allowing industrial load or PUN generation in the eli-
10 gible pool of applicants potentially increases administrative costs and tasks to ensure the generation
11 project is truly separated from the host load.

12
13 Calpine argued that the commission should not interpret §34.0106(b) as “precluding or deprioritiz-
14 ing” those PUN facilities that export full capacity to ERCOT but are also party to an “offtake” agree-
15 ment with an industrial load that is served not by a PUN but by the ERCOT grid. In such an arrange-
16 ment, the generator is exporting its power to the grid for market consumption while the dedicated
17 offtaker buys it back pursuant to the terms of a contract. The full power of the facility is used to
18 maintain overall ERCOT system frequency and is therefore primarily used in service of the grid. The
19 generator, in this instance, is primarily serving the ERCOT grid, and has arrangements that are similar
20 to a generator having power sales agreements with other retail electric providers serving residential
21 or commercial customers.

22

1 Enchanted Rock suggested that excess dispatchable generation capacity within PUNs and behind in-
2 dustrial customer meters be eligible to participate in this program where dispatchable generation is
3 primarily available for delivery to the ERCOT grid. Enchanted Rock further suggested that, if a
4 percentage threshold is adopted, 90 percent of the total potential annual output from the generating
5 facility should be supplied to the grid.

6

7 Shell Energy recommended that any cost directly linked to a PUN be excluded from eligibility for a
8 TEF loan and that the loan should only cover prorated project costs for the total net capacity that will
9 be injected into ERCOT.

10

11 Sierra Club urged the commission to focus on resources intended to serve the ERCOT wholesale
12 market and not to allow taxpayer funds to be used for PUNs or industrial load facilities that, for the
13 most part, are intended to self-provide energy to industrial loads.

14

15 TEC did not oppose the funding of facilities that are built to serve both the bulk power system and a
16 PUN. TEC recommended that the commission require any entity submitting a loan application for a
17 facility that will serve a PUN or industrial load to provide supporting documentation as to how the
18 facility will support the ERCOT grid.

19

20 TCPA commented that the commission should interpret PURA §34.0106(b) to mean that the com-
21 mission should not use the TEF funds to subsidize private, behind-the-meter generation. TCPA rec-
22 ommended that any costs that are not directly related to the production of electricity and its delivery
23 to the ERCOT grid be excluded from the estimated project costs for the purpose of calculating the

1 eligible loan amounts. Specifically, TCPA referred to facilities that would serve an industrial load in
2 PUNs that are attempting to participate in the TEF.

3

4 TPPA submitted comments that were joined by BPUB and CPS Energy. TPPA did not oppose facil-
5 ities that serve both the bulk power system and a PUN being eligible for the loan but provided a list
6 of factors that the commission should consider for evaluating applications for such facilities.

7

8 *Commission response*

9 **To determine whether an electric generating facility will be used primarily to serve an indus-**
10 **trial load or PUN, the adopted rule relies upon a calculation of excess dispatchable capacity of**
11 **the generation resources located at the facility. An applicant for a TEF loan must attest that it**
12 **will provide at least the greater of 100 MW or 50 percent of the nameplate capacity to the ER-**
13 **COT market. For example, a 300 MW co-located facility with a generation resource or re-**
14 **sources that dedicates 160 MW to the ERCOT region will be deemed to primarily serve the**
15 **ERCOT region. However, a 300 MW co-located facility with a generation resource or resources**
16 **that dedicates 140 MW to the ERCOT region will be considered to primarily serve the associ-**
17 **ated industrial load or PUN. The capacity of a new facility will be evaluated as a whole—not**
18 **on a net export basis—and it must exceed 100 MW. Accordingly, the entire facility must not**
19 **primarily serve an industrial load or PUN. This determination will be based on a comparison**
20 **between the sum of nameplate capacity of each new or upgraded generation resource at the**
21 **facility and the maximum NCP demand of the associated industrial load or PUN. The portion**
22 **of the entire facility’s total nameplate capacity that will be expected to serve the industrial load**
23 **or PUN must be less than 50 percent. Furthermore, the commission will consider the**

1 **percentage of nameplate capacity of a new or upgraded generation resource that will be used**
2 **to serve an industrial load or PUN as a factor in evaluating applications. The commission de-**
3 **clines to adopt additional factors as recommended by TPPA, because the single factor provides**
4 **a clear and replicable calculation that determines eligibility.**

5

6 TXOGA recommended that “primarily serve” should not include critical gas suppliers and critical
7 customers because maintaining energy to those entities is necessary for reliability.

8

9 Targa requested clarification on whether a facility may be eligible if the facility has 100 MW of
10 nameplate capacity that either serves critical gas suppliers or critical customers or provides excess
11 energy generation to the grid.

12

13 *Commission response*

14 **The commission declines to accept the recommendation of TXOGA to exclude critical gas sup-**
15 **pliers and critical customers when evaluating if the new capacity is primarily serving industrial**
16 **load or PUN. Whether capacity is used to serve critical gas suppliers or critical customers is**
17 **not a factor in determining if a facility primarily serves an industrial load or PUN.**

18

19 *3.a. Should the commission prescribe a percentage of total energy output that an electric gener-*
20 *ating facility must achieve to be eligible for a loan? If so, what percentage should the com-*
21 *mission prescribe?*

1 Wartsila disagreed that a percentage of total energy output should be prescribed as a threshold for
2 TEF loan eligibility. Wartsila stated that a facility that provides 100 MW of capacity to ERCOT
3 should be eligible, regardless of how much capacity provided to a PUN.

4

5 TIEC opposed an eligibility threshold based on percentage of the generator's output that is exported
6 to the grid and instead recommended using the amount of generation capacity as the threshold. TIEC
7 argued that as long as 100 MW of generation capacity is being dedicated to the ERCOT market, then
8 the facility should be eligible.

9

10 LCRA recommended that the eligibility threshold for TEF loan should be a minimum of 100 MW of
11 new capacity dedicated to serving and participating in the ERCOT wholesale market. LCRA sug-
12 gested this in conjunction with requiring appropriate facility configurations, metering schemes at the
13 outset, and an affidavit from the applicant committing that no less than 100 MW of capacity will be
14 dedicated to serving the grid. LCRA explained that using such factors for the eligibility threshold
15 avoids needless complexity and policing of meter data to determine whether the energy output of the
16 facility met the statutory requirements during a historical look-back period.

17

18 GRIT recommended that, if percentage of output is used, an eligibility threshold of 90 percent or
19 greater of the total potential annual energy output from the electric generating facility must be sup-
20 plied to the ERCOT grid via dispatchable load reduction or export. GRIT noted that a total energy
21 threshold is not necessary for a facility within a PUN if it reserves over 100 MW of dispatchable
22 generating capacity to serve the grid in excess of the capacity reserved to serve the co-located load.

1 GRIT concluded that “primarily serve” is therefore met because a defined amount of capacity is com-
2 mitted to ERCOT and not to on-site loads.

3

4 Shell Energy commented that although the total energy output will vary by technology and market
5 price signals, generation facilities must be required to demonstrate the ability to meet more than 50
6 percent capacity level. Shell Energy also recommended that during emergency conditions, if the fa-
7 cility does not make 100 percent of the net capacity projected in the loan application available to the
8 grid, any liquidated damages from the Engineering, Procurement, and Construction contract should
9 be passed back to the fund as loan pre-payment.

10

11 Sierra Club recommended that to the extent funding is available, at least 50.1 percent of the energy
12 from a PUN or industrial load should be intended for the ERCOT wholesale electricity market and
13 that the commission should only allow loans on the part of the generation that serves the larger mar-
14 ket.

15

16 TEC recommended that the commission develop factors for evaluation, such as the percent of time
17 power flows to ERCOT, ERCOT’s functional control of the facility, regular use of the unit, and per-
18 centage of output used by ERCOT versus the industrial load or PUN. TEC did not recommend a
19 specific qualifying threshold.

20

21 TCPA recommended that, if the commission permits PUNs to qualify for the TEF, it should prescribe
22 a percentage of no less than 51 percent of total facility net output in the ERCOT wholesale market to

1 be eligible for the loan. TCPA further asserted that the eligible amount of the loan should be tied
2 directly to the percentage of total net energy output in the ERCOT wholesale market.

3

4 TPPA provided several factors that the commission must consider when evaluating the eligibility of
5 facilities serving both the ERCOT market and an industrial load or PUN. These include assessment
6 of whether the energy generated at the facility's low sustainable limit would initially serve industrial
7 load or PUN or be offered into ERCOT market; percentage of nameplate capacity that is expected to
8 serve load or PUN at any time and under seasonal net capacities for peak load seasons; energy offering
9 practices; number of hours that any energy generated is expected to serve ERCOT; availability of full
10 generation output during emergency conditions; benefits to other industrial processes such as from
11 the use of steam from cogeneration units; and any other factors that the commission deems appro-
12 priate.

13

14 TIEC opposed an eligibility threshold based on the percentage of the generator's output that is ex-
15 ported to the grid and instead recommended using the amount of capacity as the standard. TIEC
16 argued that as long as 100 MW of generation capacity is dedicated to the ERCOT grid, then the fa-
17 cility is eligible.

18

19 TXOGA stated that it would be overly prescriptive to mandate that a specific percentage of a PUN's
20 total energy output serve the grid rather than the PUN or industrial load.

21

22 *Commission response*

1 **The commission determines that the eligibility threshold for a project will be measured by**
2 **nameplate capacity, rather than energy output. The factors determining security-constrained**
3 **economic dispatch can be outside a generation entity’s control and could affect the amount of**
4 **its energy output that is exported to the grid. Therefore, it is appropriate to rely on nameplate**
5 **capacity rather than energy output measured over a period of time as a criterion for project**
6 **eligibility.**

7

8 *3.b. Should the commission employ another method to ensure that an electric generating facility*
9 *primarily serves the ERCOT grid? If so, what method is appropriate and why?*

10

11 Shell Energy argued that a GR must be primarily dedicated to providing energy and ancillary services
12 to the ERCOT market to be eligible for a TEF loan. A facility that is switchable to another grid, must
13 only be able to do so upon approval from ERCOT and would be required to switch back if needed.

14

15 As stated above, TEC recommended that the commission develop factors for evaluation, including
16 but not limited to ERCOT’s functional control of the facility and regular use of the unit.

17

18 TCPA recommended that the commission use North American Electric Reliability Corporation
19 (NERC) Generating Availability Data System (GADS) definitions for “availability”, based on the
20 facility’s Equivalent Unplanned Outage Factor (EUOF), rather than EAF, and that performance
21 should be calculated on a rolling average of at least 12 months as opposed to on an hourly basis.

22 TCPA recommended that the commission specify a methodology that prohibits a facility from allo-
23 cating less equivalent outage hours to the portion of the facility serving ERCOT load.

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TPPA recommended that the rule include clawback provisions for facilities whose market behaviors did not align with the description in the initial application, and facilities that end up primarily supporting an industrial load or PUN should be considered in default of the loan.

As stated above, TIEC argued that as long as 100 MW of generation capacity is being dedicated to the ERCOT grid, then the facility is eligible to participate in the TEF program.

TXOGA recommended introducing a “Support Service Requirement” that would condition the receipt of the loan on the facility providing certain grid support services during critical periods.

Commission Response

An electric generating facility that will serve an industrial load or a PUN is eligible to apply for a TEF loan if it fulfils the eligibility conditions described under subsection (c). The capacity of a new facility will be evaluated as a whole for purposes of determining if it primarily serves an industrial load or a PUN. Whether the entire facility primarily serves an industrial load or PUN will be based on a comparison between the sum of the nameplate capacity of each new or upgraded generation resource at the facility and the maximum NCP demand of the associated industrial load or PUN. For an electric generating facility that will not provide all capacity exclusively to the ERCOT power region, only the additional cost to upgrade or construct the capacity that exclusively serves the ERCOT region will be eligible for a loan under this program and will be funded proportionally. The commission modifies the rule accordingly.

1

2 ***General Comments***3 *Relationship among Texas Energy Fund Programs*

4 TPPA, T CPA, and Vistra requested clarification on how much of the TEF will be allocated toward
5 each program within each fund: In-ERCOT Generation Loan Program, Completion Bonus Grants
6 (CBG), Grants for Facilities Outside ERCOT Power Region, and the Texas Backup Power Package
7 (BPP). TPPA shared concerns that total appropriations will be depleted in the In-ERCOT Generation
8 Loan Program with none left over for the other three programs.

9

10 TPPA requested clarification on how the loan program will interact with the BPP. TPPA alleged that
11 an applicant cannot participate in both the TEF and BPP and recommended this be stated explicitly
12 in the rule.

13

14 LCRA stated that knowing whether and to what degree participation in TEF and CBG programs is
15 permissible “will be a significant determinant for entities in deciding whether they will apply for the
16 loan program.”

17

18 Wartsila favored allowing loan program recipients to be eligible to apply for a CBG, if eligibility
19 requirements are met. Wartsila also recommended that loan program recipients be eligible for a CBG
20 and recommended that evaluations for both programs be independent. Wartsila specifically referred
21 to proposed §25.511(d)(1)(J), relating to Texas Energy Fund Completion Bonus Grant Program, in
22 Project No. 55812. This provision requires “a statement of whether the applicant applied for a loan
23 under 16 TAC §25.510 as well as the commission’s determination on the loan application.” To reduce

1 bias, Wartsila recommended independent evaluations for both the In-ERCOT Generation Loan Pro-
2 gram and the CBG, and that grant applicants who did not receive a loan be considered “equivalently”
3 for the CBG.

4

5 *Commission Response*

6 **PURA Chapter 34 provides independent eligibility and evaluation criteria for each TEF pro-**
7 **gram. While PURA §34.0106(e)(2) allocates an aggregated maximum of \$7.2 billion from the**
8 **TEF to both programs, applicants or projects for each of the two programs need not be related**
9 **or known in advance. Each TEF program is independent with respect to eligibility and evalu-**
10 **ation criteria. Therefore, it is unnecessary to modify proposed §25.510 to refer to other TEF**
11 **programs.**

12

13 **Because the universe of applicants for each TEF program is not known at this time, the total**
14 **amount of funds that should be allocated toward each program also cannot be determined. For**
15 **this reason, the commission declines to revise the proposed rule to add specific amounts to be**
16 **allocated among each of the four programs.**

17

18 **Regarding Wartsila’s comment on independent evaluations, the In-ERCOT Generation Loan**
19 **and CBG programs have different goals and criteria. Applications to each will be evaluated**
20 **within the scope of the relevant program. Thus, application, receipt, or denial of a loan does**
21 **not increase or decrease the likelihood of being awarded a CBG.**

22

23 *Public reporting*

1 TXOGA asked if the commission has considered how the agency will report to stakeholders and the
2 public on the program, if there would be monthly or quarterly updates via the commission open meet-
3 ings or filings in the appropriate docket, and if there are other considerations, for transparency, that
4 the commission is considering.

5

6 Sierra Club recommended making public information on any application for a loan available through
7 the commission's filings interchange and allowing public comments to be made. In addition, Sierra
8 Club suggested that the commission create a quarterly report on any applications received or any
9 loans approved or denied. Sierra Club commented that this would allow policymakers and the public
10 at large to see if the program has been successful in incentivizing new construction of dispatchable
11 generation.

12

13 *Commission Response*

14 **The commission may require public reporting on the TEF at open meetings, but any such spe-**
15 **cific requirement is beyond the scope of this rulemaking. The commission declines to modify**
16 **the proposed rule to add any specific public reporting.**

17

18 *MOUs and River Authorities*

19 CPS Energy noted several ways in which the proposed rule appeared to exclude participation by
20 MOUs, while LCRA had similar comments regarding river authorities. Their concerns centered on
21 proposed §25.510(g)(2), which requires the TEF loan to be “the senior debt secured by the electric
22 generating facility to be completed.” CPS Energy and LCRA pointed out that, as political subdivi-
23 sions of the state, they are prevented from pledging their real estate as security, but they can pledge

1 the revenues of their utility systems as security for senior debt. In addition, both MOUs and river
2 authorities have statutory restrictions on the seniority of their debt. For example, CPS Energy stated
3 that “Chapter 1502 places a statutory first lien on gross revenues for payment of operations and
4 maintenance expenses of the system.” Because of these statutory limitations applicable to MOUs and
5 river authorities, both CPS Energy and LCRA recommended modifying the proposed rule to allow
6 for their participation. Specifically, LCRA suggested defining “senior debt” as “debt having no senior
7 rights to the security securing the fund loans, but which may be on parity with or equal to the bor-
8 rower' s other senior debt.” CPS Energy also suggested adding a subsection to the proposed rule that
9 lists the relevant security requirements and loan agreements exclusively applicable to MOUs con-
10 sistent with Texas statutory law.

11

12 *Commission Response*

13 **PURA § 34.0104(e) contemplates the inclusion of river authorities and MOUs as potential bor-**
14 **rowers in the in-ERCOT Generation Loan Program. The commission acknowledges that these**
15 **public power entities are subject to other laws governing project financing and the encum-**
16 **brance of utility assets. Accordingly, the commission modifies subsections (g) and (h) to allow**
17 **an MOU or river authority to obtain a TEF loan on terms equivalent with corporate applicants.**

18

19 *Timing of Loan Funds*

20 CPV recommended modifying the rule to “allow sponsors to access the program [funds] for construc-
21 tion financing, term financing, or for combined construction and term financing” which could benefit
22 project progression. CPV remarked that this would facilitate initial institutional construction bridge
23 financing with the expectation and commitment of the TEF as “construction take-out financing.” CPV

1 stated that this additional flexibility in the program would avoid potential delays in projects that may
2 occur if sponsors purposely delay a project until it qualifies for the TEF.

3

4 *Commission Response*

5 **Under PURA §34.0104, loans combine construction and term financing into a single project**
6 **loan with a 20-year term. Therefore, the loan structure will not be a series of financings that**
7 **change from initial construction bridge financing to take-out financing or other loans as hy-**
8 **pothesized. The commission declines to modify the rule to allow for serialized loans or refi-**
9 **nancements of TEF loans.**

10

11 *Standards for Evaluating Loan Repayment Ability*

12 LSP recommended identifying, well in advance of the notice of intent (NOI) due date, what practices
13 the commission will adopt regarding sizing project debt. LSP suggested applying more conservative
14 standards when evaluating an applicant's ability to repay over the term of the loan and sizing the loan
15 appropriately.

16

17 *Commission Response*

18 **Under PURA §34.0104(b)(2), the TEF loan is for an amount not to exceed of 60 percent of esti-**
19 **mated costs of the facility to be constructed. However, a particular applicant's credit profile**
20 **may not support the maximum statutory loan amount. The amount for which an applicant may**
21 **qualify cannot be known until after the TEF administrator conducts its due diligence. It is,**
22 **therefore, unnecessary to identify further detail on sizing project debt.**

23

1 *Debt Sizing and Project Prioritization*

2 LSP requested clarification on how TEF funds would be allocated in the event the total funds re-
3 quested by qualified loan recipients exceed the available amount. LSP also recommended requiring
4 project applicants to disclose the minimum amount of TEF debt that would make projects viable.

5
6 NRG recommended establishing prioritization criteria and prioritizing projects that are in the best
7 position from a project viability standpoint. NRG specifically recommended that priority be given to
8 projects that are close to financial close. Similarly, LCRA suggested prioritizing projects that are at
9 an advanced stage of development and are the most likely to be eligible for CBG.

10

11 Vistra disagreed with NRG about prioritizing projects that are nearest to financial close and recom-
12 mended establishing several tranches to fund loans, each with its own application window.

13

14 *Commission Response*

15 **The commission disagrees with NRG's suggestion to prioritize projects based on their proxim-**
16 **ity to financial close. One major TEF objective is to solicit proposals to develop up to 10,000**
17 **MW of newly installed, dispatchable generation, and the commission seeks to develop as broad**
18 **a pool of applicants as reasonably possible in order to meet this objective. Prioritizing projects**
19 **that are closer to financial close unreasonably limits the applicant pool.**

20

21 **Additionally, the commission disagrees with Vistra's suggestion to segregate portions of the**
22 **TEF into distinct funding tranches. The commission will allocate funds based on the**

1 **applications received and the goals of the TEF, not an arbitrary amount of funding at a set time.**
2 **The commission accordingly declines to state the priorities requested by the commenters.**

3

4 *Interconnection*

5 *Vistra* suggested the rule language, or another commission rule, should expressly state that ERCOT
6 and transmission service providers (TSPs) are obligated to prioritize interconnection of projects
7 awarded TEF loans and should mirror the requirement of SB 2627 that requires ERCOT to prioritize
8 these interconnections.

9

10 *Commission Response*

11 **The prioritization of interconnection for projects awarded a TEF loan is beyond the scope of**
12 **this rulemaking. Therefore, the commission declines to modify the rule as recommended by**
13 **Vistra.**

14

15

16 *Proposed §25.510(b)–Definitions*

17 Proposed §25.510(b) defines certain terms used in the rule.

18

19 TIEC recommended adding a definition for the term “electric generating facility” and proposed that
20 it mean “an entire generation unit, or specified portion of a generation unit’s capacity.” TIEC sug-
21 gested that the definition would allow facilities serving co-located industrial load that may oversize
22 generation facilities with the intent to sell excess capacity to the ERCOT system, to participate.

23

1 LCRA recommended either adding a definition of “senior debt” or for the commission to explicitly
2 document its interpretation of “senior debt” in the preamble adopting the rule, as described further
3 below in response to §25.510(g).

4

5 Vistra recommended adding §25.510(b)(3) to define EUOF. Vistra advocated for the use of EUOF
6 instead of the equivalent availability factor (EAF) as the required performance threshold for borrow-
7 ers.

8

9 *Commission Response*

10 **The commission declines to define “electric generating facility” in the rule because the term is**
11 **already defined in §25.5.**

12

13 **The commission disagrees with LCRA’s recommendation to add to the rule a definition of “sen-**
14 **ior debt.” PURA §34.0104(b)(3) specifies TEF loans to be “the senior debt secured by the facil-**
15 **ity.” However, the commission adds a provision at (g)(2) to allow only MOUs and river author-**
16 **ities to pledge an interest in net revenues of the utility system the TEF-funded facility is a part**
17 **of, even if the MOU or river authority has previously made a pledge of those same net revenues**
18 **of the utility system.**

19

20 **The commission declines to use EUOF as the required performance threshold for borrowers.**
21 **Instead, the commission will rely on ERCOT availability data to determine generation resource**
22 **performance and modifies §25.510(b)(3) to define the 12-month performance availability factor**
23 **(PAF) that reflects the use of such ERCOT data.**

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Proposed §25.510(b)(2)–Definition of COD

Proposed §25.510(b)(2) defines the term “commercial operations date” (COD) as the date on which the electric generating facility has completed all qualification testing administered by ERCOT and is approved for participation in the ERCOT market, as identified by ERCOT in the applicable monthly generator interconnection status (GIS) report.

WattBridge recommended tying the definition of COD to Part 3 approval within the ERCOT commissioning process. WattBridge noted that Part 3 approval would allow a new generator to participate in the day-ahead market.

Vistra recommended the commission accept any ERCOT record demonstrating the COD rather than solely relying on the ERCOT GIS report.

HEN stated that it is unclear what is meant by “completed all qualification testing administered by ERCOT and is approved for participation in the ERCOT market” and recommended removing it. Vistra and HEN recommended removing the phrase “as identified by ERCOT in the applicable monthly generator interconnection status report” from the COD definition. HEN recommended tying COD to ERCOT Part 2 approval and using ERCOT’s New Generator Commissioning Checklist.

TPPA and Calpine noted that the definition of COD is different between proposed §25.510 and proposed §25.511 and recommended consistency in definitions across rules.

1 *Commission Response*

2 **The commission agrees with Vistra that COD should not depend on the ERCOT monthly GIS**
3 **report. The commission agrees with commenters that recommended tying COD to the ERCOT**
4 **generator commissioning checklist and modifies the definition of COD to align it with ERCOT's**
5 **resource commissioning date as defined in ERCOT protocols. The resource commissioning**
6 **date represents the conclusion of the commissioning process and indicates a generation re-**
7 **source's fully interconnected status with the ERCOT power region.**

8

9 **The commission agrees with TPPA and Calpine that the definition of COD should be consistent**
10 **between §25.510 and §25.511. The commission modifies the rule and will subsequently align**
11 **§25.511 in Project No. 55812.**

12

13 *Proposed §25.510(c)(2) – Eligible Activities*

14 Proposed §25.510(c)(2) describes activities that are eligible for a loan.

15

16 *Aggregation*

17 TXOGA suggested considering ways to allow for smaller generation units or aggregated units to be
18 eligible for funds from the TEF to disperse needed dispatchable resources throughout the state. GRIT
19 proposed adding language in §25.510(c)(2)(A) to include facilities across multiple locations.

20

21 USA Compression recommended aligning §25.510(c)(2) with proposed §25.511(c)(1), which defines
22 “capacity of at least 100 MW” by including all the MWs provided by “(A) The construction of new
23 dispatchable electric generating facilities providing power for the ERCOT region; or (B) The addition

1 of new dispatchable electric generating facilities at an existing location providing power for the ER-
2 COT region.” USA Compression stated this modification would incentivize distributed generation in
3 the loan program.

4

5 *Commission Response*

6 **The commission disagrees with the commenters’ recommendations to allow entities that aggregate electric generating facilities across multiple locations to apply for TEF funding. To be**
7 **eligible for TEF funding, a project must be an upgrade of an existing facility or new facility**
8 **construction and install at least 100 MW in nameplate capacity behind a single point of inter-**
9 **connection. PURA §34.0104(a) explicitly describes an eligible upgrade project as one that**
10 **would result in the net increase of 100 MW for “each facility.” Similarly, construction of new**
11 **facilities that “each have a generation capacity of at least 100 megawatts” is required for the**
12 **projects to be eligible for TEF funding.**

14

15 *New eligible activity*

16 TIEC recommended adding a new provision to the eligible activities for a loan: “For an electric gen-
17 erating facility that serves load behind the retail meter, any new net dependable capacity that exceeds
18 the maximum non-coincident peak demand of the co-located loads by at least 100 MW.” TIEC sug-
19 gested the rule should base facility eligibility on the total net dependable capacity of the generation
20 facility in excess of the maximum NCP demand of the associated load.

21

22 CPV recommended revising the rule to allow a power project with carbon capture to be eligible for
23 the loan program as a single entity. CPV suggested allowing costs for both energy production and

1 carbon capture to be included in the loan program. CPV noted that if the Environmental Protection
2 Agency's proposed 111B and D regulations take effect as currently written, the regulations would
3 negatively affect plants that do not build decarbonization technology and result in significant extra
4 costs for Combined Cycle Gas Turbine technology and associated carbon capture facility.

5

6 *Commission Response*

7 **TIEC's position regarding net dependable capacity fails to address the term "primarily" in**
8 **PURA §34.0106(b). Whether an electric generating facility primarily serves a co-located load**
9 **is based on a comparison between the sum of the nameplate capacity of each generation re-**
10 **source at the new or upgraded facility and the maximum NCP demand of the associated indus-**
11 **trial load or PUN. The portion of nameplate capacity that will be expected to serve the indus-**
12 **trial load or PUN must be less than 50 percent, and the remaining capacity serving the ERCOT**
13 **market must be greater than 100 MW. For this reason, the commission declines to modify the**
14 **proposed rule based on TIEC's suggestion.**

15

16 **The commission clarifies that components not clearly required for generation, such as carbon**
17 **capture, are not eligible loan costs. Even if such components may be related to generation, car-**
18 **bon capture technology does not result in a net capacity increase for the ERCOT power region,**
19 **and therefore, such costs are not authorized under PURA §34.0104. Accordingly, the commis-**
20 **sion declines to make any changes in response to CPV's recommendation to allow estimated**
21 **costs related to carbon capture devices associated with the facility.**

22

23 *Measuring capacity increase*

1 TPPA recommended clarifying that the 100 MW requirement is based on nameplate capacity rather
2 than summer or winter net dependable capability.

3

4 Calpine requested that the commission measure “net increase” for upgrades to existing facilities based
5 on a facility’s average High Sustained Limit (HSL) in the year prior to filing for a TEF loan. Calpine
6 advised against measuring “net increase” using the facility’s installed capacity rating, because the
7 installed capacity rating is the maximum power that a generating unit can produce during normal
8 sustained operating conditions as specified by the equipment manufacturer.

9

10 *Commission Response*

11 **The commission agrees with TPPA that the 100 MW “net increase” eligibility threshold should**
12 **be measured by nameplate capacity and modifies the provision accordingly. PURA §34.0104**
13 **does not establish a preference for seasonal capacity ratings and, therefore, consideration of a**
14 **project’s potential to operate during normal conditions is appropriate. The commission disa-**
15 **grees with Calpine that “net increase” for upgrades should be calculated based on average HSL**
16 **because this measurement cannot be applied to new construction. To quantify capacity during**
17 **application evaluation, the commission must use a standard and easily identifiable metric that**
18 **is relevant to both new construction and upgrades to existing facilities.**

19

20 *Definition of “new construction” and “upgrades to existing”*

21 LSP suggested clarifying the categories of “new construction” and “upgrades to existing.” LSP rec-
22 ommended classifying the addition of a new prime mover and generator set at an existing power plant

1 as “new construction.” LSP proposed limiting “upgrades to existing” to the modifications of an ex-
2 isting prime mover or generator.

3

4 Vistra suggested mirroring statute by removing the word “new” in “new construction” as the term
5 “new construction” is undefined and injects uncertainty into determinations of eligibility. Vistra rec-
6 ommended replacing the word “new” in proposed §25.510(c)(2)(A) with a cross reference to
7 §25.510(c)(4)(C) or removing it.

8

9 *Commission Response*

10 **The commission modifies the rule to clarify that “new construction” refers to an instance when**
11 **an electric generating facility will be built where no point of interconnection exists, while “up-**
12 **grades to existing” refers to construction where a point of interconnection already exists, and**
13 **an additional point of interconnection is not required for the deliverability of energy from the**
14 **upgraded capacity.**

15

16 *Proposed §25.510(c)(3)–Eligibility Requirements for Proposed Facility*

17 Proposed §25.510(c)(3) defines the requirements to which a proposed facility must adhere.

18

19 Golden Spread and TEC held similar positions regarding switchable facilities. Golden Spread ad-
20 vised that existing facilities that serve a non-ERCOT interconnection should be eligible for loans if
21 the existing facility newly interconnects to ERCOT. Golden Spread requested modification to the
22 language to recognize that switchable resources may not always provide power to the ERCOT grid

1 during the term of a loan. TEC recommended allowing generators that can provide power to ERCOT
2 and other independent system operators (ISOs) to participate in the program.

3

4 TPPA opposed permitting loan awards to facilities capable of switching power from ERCOT to a
5 neighboring regional transmission organization. TPPA expressed concern that a facility could be
6 designed to provide energy to ERCOT (as switchable), receive a loan, then not provide any energy to
7 ERCOT.

8

9 *Commission Response*

10 **The commission declines to modify the rule to include switchable facilities as eligible loan pro-**
11 **jects. GRs that can switch operations between two separate transmission networks are gov-**
12 **erned by agreements between the reliability coordinators for those networks, and thus it be-**
13 **comes increasingly difficult to ensure that generation capacity supported by TEF funding pri-**
14 **marily provides power to the ERCOT network. The commission modifies the rule at (c)(4)(D)**
15 **to clarify that projects to construct or operate switchable facilities are not eligible for a TEF**
16 **loan.**

17

18 Vistra recommended requiring applicants to register as a “generation entity” because this will ensure
19 the commission’s weatherization rules at §25.55 apply.

20

21 *Commission Response*

22 **Facilities that receive loans under this program must register as a GR with ERCOT and there-**
23 **fore must adhere to the requirements of §25.55. The commission modifies §25.510(h) to require**

1 **an applicant that is awarded a TEF loan to register the facility as a GR in the normal course of**
2 **the ERCOT commissioning process.**

3
4 *Proposed §25.510(c)(3)(A) and (c)(3)(B)–Eligibility Requirements for Proposed Facility*

5 Proposed §25.510(c)(3) states that a proposed facility must be designed to interconnect and provide
6 power to the ERCOT power region and must be designed to participate in the ERCOT wholesale
7 market.

8
9 TPPA recommended the removal of the phrase “be designed to” in §25.510(c)(3)(A) and (c)(3)(B)
10 because a strict reading could allow a facility that is designed, but is ultimately not built, to receive a
11 loan. TPPA noted that a facility could be designed to provide energy to ERCOT (as switchable),
12 receive a loan, then not provide any energy to ERCOT.

13
14 *Commission Response*

15 **The commission disagrees with TPPA’s comments because new and upgraded facilities must**
16 **necessarily be in the design phase of development, not existing, and other provisions of the rule**
17 **guard against the possibility that an applicant will receive a loan but not build a facility.**

18
19 *Proposed §25.510(c)(4)(A)–Non-Eligible Activities*

20 Proposed §25.510(c)(4)(A) prohibits the construction or operation of an electric energy storage facil-
21 ity from being eligible for a loan.

22

1 Sierra Club suggested an amendment to add language that allows for electric energy storage to be
2 included as part of an overall facility, but that portion must be excluded from the application for a
3 loan, and that thermal energy storage facilities be eligible for a loan.

4

5 TPPA stated that “electric energy storage facility” is an undefined term and requested clarity on its
6 distinction with “energy storage resource.”

7

8 *Commission Response*

9 **The commission disagrees with Sierra Club’s proposed modification to the rule. PURA**
10 **§34.0104(a) states an electric energy storage facility is not eligible. Although it is unnecessary**
11 **to define the term “electric energy storage facility,” the commission notes that the incidental**
12 **presence of some electric energy storage at a facility is insufficient by itself to classify it as an**
13 **“electric energy storage facility.” Whether the presence of some energy storage renders the**
14 **facility an electric energy storage facility will be determined on a case-by-case basis and will**
15 **generally be based on whether the energy storage will be used to support operations or will be**
16 **used for later resale. With respect to energy storage more broadly, the commission notes that**
17 **the TEF is directed to “dispatchable electric generating facilities”—not energy storage. Ac-**
18 **cordingly, to the extent that a dispatchable electric generating facility is configured to store**
19 **some of its energy output, such storage is outside the scope of this rule. Other types of storage,**
20 **such as thermal, may be included as part of the proposed facility.**

21

22 **The commission agrees with TPPA that the term “electric energy storage facility” is not explic-**
23 **itly defined. The commission declines to define the term electric energy storage facility but**

1 clarifies that “electric energy storage facility” and “energy storage resource” are not synony-
2 mous.

3

4 *Proposed §25.510(c)(4)(B)–Non-Eligible Activities*

5 Proposed §25.510(c)(4)(B) prohibits the construction or operation of a natural gas transmission pipe-
6 line from being eligible for a loan.

7

8 TPPA recommended adding language to ensure that infrastructure constructed and operated as part
9 of interconnecting the natural gas generation facility to its fuel supply is not excluded from eligibility.

10

11 *Commission Response*

12 **The commission agrees with TPPA’s recommendation and modifies the rule to explicitly in-
13 clude natural gas interconnection infrastructure as part of the facility.**

14

15

16 *Proposed §25.510(c)(4)(D)–Non-Eligible Activities*

17 Proposed §25.510(c)(4)(D) prohibits operations that primarily serve an industrial load or PUN from
18 being eligible for a loan.

19

20 TPPA suggested the commission should require an annual affidavit from loan recipients that serve an
21 industrial load or PUN regarding their activities in the wholesale market. TPPA also suggested that
22 commission staff conduct an annual review of these facilities’ operations. TPPA noted that these
23 actions would provide assurance that facilities supported by TEF loans primarily serve the overall

1 ERCOT market, rather than individual consumers. TPPA made the same recommendation for
2 §25.510(h)(1)(H), regarding compliance and audit covenants.

3

4 Targa recommended allowing generators that serve critical gas suppliers and critical customers to be
5 eligible if the generators also serve ERCOT. Targa cited rules of statutory construction and stated
6 that the commission must examine the changes to PURA since Winter Storm Uri, referring to changes
7 made by S.B. 3, H.B. 3648 (87th Legislature, R.S), and H.B. 5066 (88th Legislature, R.S.). Targa
8 provided redlines consistent with the recommendations.

9

10 Calpine recommended prioritizing generators that deliver all generation capacity to the ERCOT sys-
11 tem over co-located generators and noted in many instances that a PUN generator or generator serving
12 a dedicated industrial load is in the service of primarily serving its dedicated load and, therefore,
13 cannot also primarily serve the ERCOT wholesale market. Calpine suggested clarifying what else it
14 might mean to “primarily serve an industrial or PUN load.” Calpine recommended that a PGC should
15 not be considered as “primarily serving an industrial or PUN load” if it exports its full capacity to the
16 ERCOT grid while also being party to an offtake agreement with an industrial load.

17

18 Vistra suggested the commission should not evaluate proposed projects that serve an industrial load
19 or a PUN on the limited grounds of whether the project will be available during an Energy Emergency
20 Alert (EEA). Rather, it recommended that the commission should examine how much output the
21 project will provide to the bulk power system holistically. Vistra recommended the commission pri-
22 oritize facilities that will participate fully in the market and, if the PUNs are funded, then the loan

1 funding should be appropriately prorated relative to the participation in the market. Vistra also rec-
2 ommended that “Operation” be changed to be “Construction or operation of a facility.”

3

4 GRIT supported TIEC’s comments that, if an electric generating facility is offering 100 MW exclu-
5 sively to the ERCOT bulk power system, it should qualify regardless of how much capacity it supplies
6 to a co-located load, but if a facility is idle most of the time and is considered by its co-located load
7 as backup, it could offer its currently unused potential to the bulk power system as long as less than
8 10 percent of its energy output is going toward the co-located load. GRIT provided redlines consistent
9 with its recommendations.

10

11 TCPA recommended that the commission not embrace anything less restrictive than what is already
12 contained in the proposed rule. TCPA also recommended avoiding tying eligibility to point in time
13 capacity snapshots or EEA event or NCPs. TCPA suggested focusing on standalone projects first
14 that are dedicated to generation and ERCOT and that, if the projects are not behind the meter and they
15 are a hedge between customer and generator or if the energy is flowing to the transmission system,
16 then it should qualify.

17

18 *Commission Response:*

19 **The commission disagrees with Targa’s proposal and declines to provide an exception for pro-**
20 **posed facilities that will primarily serve critical gas suppliers and critical customers. Such pro-**
21 **posed facilities are subject to the same requirements as other proposed facilities.**

22

1 **The commission agrees with commenters that generation facilities that primarily serve the ER-**
2 **COT market should be prioritized for funding over facilities that primarily serve dedicated**
3 **industrial load and clarifies the eligibility conditions for such facilities under subsection (c).**
4 **The commission also agrees with the redlines provided by Vistra and modifies subsection**
5 **(c)(4)(D) accordingly.**

6

7 *Proposed §25.510(d)(1)–Notice of Intent (NOI) to Apply*

8 Proposed §25.510(d)(1) states that an applicant must submit an NOI at least 60 days before submitting
9 an application and defines the requirements that must be included.

10

11 Sierra Club recommended adding a requirement for information about regulatory and environmental
12 permits in the NOI to apply, including the applicant’s efforts to meet such requirements.

13

14 Calpine recommended the addition of new rule language to require a Generation Interconnection or
15 Change Request, a completed ERCOT screening study, and a Full Interconnection Study agreement
16 at the NOI stage to demonstrate the applicant has sufficient capital to cover the 40 percent of projected
17 costs not covered by the loan. Calpine asserted that this information would also demonstrate the via-
18 bility of the proposed facility and construction timeline. Calpine suggested that the applicant should
19 also have demonstrated site control to ERCOT and submit an attestation of compliance with the Lone
20 Star Infrastructure Protection Act under the ERCOT Planning Guide. Calpine urged the development
21 of forms for the NOI, the application, and all other required ancillary documents.

22

1 CPV recommended reducing the 60-day period for the NOI to 30 days to reduce unnecessary delays
2 for resources in advanced development stages and approaching the commencement of construction.

3

4 WattBridge recommended allowing NOIs so that applicants may apply as soon as possible. Watt-
5 Bridge remarked that it does not see June 1st as the start of application acceptance, but as the date
6 when the first batch of applications is ready for awarding. WattBridge suggested that this approach
7 prevents further compression of the timeline and helps avoid jeopardizing the COD target of Summer
8 2026.

9

10 *Commission Response*

11 **The commission intends the NOI to serve as a statement of interest and expression of initial**
12 **project viability for program management and planning purposes only. Incorporating the in-**
13 **formation requested by Sierra Club and Calpine is unnecessary because it does not relate to**
14 **loan program administration. However, the commission will require regulatory and environ-**
15 **mental compliance information as part of the application phase and will be assessed during the**
16 **due diligence. Accordingly, the commission declines to modify the rule.**

17

18 **In response to Calpine's request that standardized forms be developed for the application pro-**
19 **cess, the commission will develop a web-based portal to receive information required in the**
20 **NOI.**

21

22 **The commission agrees with CPV's recommendation to reduce the 60-day period for submis-**
23 **sion of a NOI. Instead of requiring NOI submission at least 30 days before an application, as**

1 **CPV suggested, the commission modifies the rule to require an applicant to submit the NOI no**
2 **later than May 31, 2024, correlating to an application open date of June 1, 2024.**

3
4 *Proposed §25.510(d), (e), and (f)–Notice of Intent to Apply, Application Requirements and Pro-*
5 *cess, and Evaluation Criteria*

6 Proposed §25.510(d) describes requirements for an applicant to submit an NOI and to separately file
7 a letter with the commission. Proposed §25.510(e) defines the application requirements, all of which
8 must be submitted by “the applicant.” Proposed §25.510(f) defines the evaluation criteria the com-
9 mission will use when approving or denying an application, all of which refer to evaluation of “the
10 applicant.”

11
12 Vistra recommended revisions to the rule to allow a corporate parent of a subsidiary applicant to
13 submit an NOI, application, and supporting information on behalf of its subsidiary because at the time
14 of application, the project company might not be formed, capitalized, or have sufficient stand-alone
15 resources. Vistra further stated that some projects might not be economically viable without a TEF
16 loan, and the program will be more efficient and effective if a corporate parent can apply on behalf
17 of a subsidiary. Vistra proposed changes to allow corporate parents to submit the NOI on behalf of
18 subsidiary applicants. Vistra also recommended that the commission consider the corporate parent’s
19 creditworthiness when evaluating the subsidiary’s application.

20

21 *Commission Response*

22 **The commission agrees with Vistra that a project entity applicant may not yet exist at the time**
23 **of the NOI. Accordingly, a corporate sponsor or parent entity may submit an NOI or apply on**

1 **behalf of a project entity so long as the project entity is the eventual party to the loan agreement**
2 **and provides appropriate evidence confirming it is the subsidiary of the corporate sponsor or**
3 **parent. The commission modifies the rule accordingly.**

4

5 *Proposed §25.510(d)(1)(A), (d)(2), and (e)(1)–Notice of Intent to Apply, Application Require-*
6 *ments and Process*

7 Proposed §25.510(d)(1)(A) requires the NOI to include the applicant’s corporate name and the name
8 of the electric generating facility for which it seeks a loan. Proposed §25.510(d)(2) states that the
9 applicant must separately and concurrently file a letter with the commission stating the applicant’s
10 corporate name and the MW capacity that the requested loan amount will finance. Proposed
11 §25.510(e)(1) states an application must include the applicant’s corporate name and the name of the
12 electric generating facility for which it requests a loan.

13

14 CPS Energy recommended removing the term “corporate” and replacing it with “legal” in
15 §25.510(d)(1)(A), (d)(2), and (e)(1) because municipalities do not have a corporate name and would
16 therefore be ineligible to apply based on the requirement.

17

18 TPPA recommended adding the term “proposed” before “name of the electric generating facility” in
19 §25.510(d)(1)(A) because the name of the electric generating facility may change.

20

21 *Commission Response*

22 **The commission agrees with CPS Energy that an applicant’s “legal name” is more appropriate**
23 **to capture all types of applicants. The commission modifies the rule accordingly. The**

1 **commission agrees with TPPA that the name of an electric generating facility may change after**
2 **submission of the NOI. The commission therefore modifies the rule to request the proposed**
3 **name of the electric generating facility in the NOI.**

4

5 *Proposed §25.510(d)(1)(E)–Notice of Intent to Apply*

6 Proposed §25.510(d)(1)(E) requires that for each electric generating facility, information demonstrat-
7 ing that the applicant is capable of financing project-related costs not supported by a loan awarded
8 under this section to be submitted as part of the NOI.

9

10 Advanced Power recommended allowing the applicant to establish its ability to fund the necessary
11 equity through a combination of a non-binding equity commitment(s) and an established track-record
12 of successfully financing thermal generation projects in the United States. Advanced Power also
13 recommended allowing a phased process where a non-binding equity commitment(s) is included as
14 part of the initial NOI for TEF funding, followed by a binding equity agreement closer to financial
15 close and prior to the disbursement of TEF funds where the state’s involvement in the financing of the
16 project is known.

17

18 NRG recommended allowing applicants to submit an attestation regarding proposed financing of all
19 non-TEF loan amounts. NRG stated this would be simpler than requiring financial statements or
20 equity commitment letters at NOI stage, which is early for a project.

21

22 *Commission Response*

1 **The commission agrees with Advanced Power that it is not commercially reasonable to require**
2 **an applicant to provide a binding equity agreement at the NOI stage. For the NOI, an applicant**
3 **proposing to use equity must include a non-binding equity commitment letter to demonstrate**
4 **that the applicant is capable of financing project-related costs not supported by a TEF loan.**
5 **For the application, an applicant proposing to use equity must submit a binding equity com-**
6 **mitment letter with its application. An applicant proposing to fund the balance of costs through**
7 **subordinated debt must submit evidence of its ability to fund those costs at both the NOI stage**
8 **and in its application. The commission modifies (d)(1) and (e)(4)(C)(i) accordingly.**

9

10 **With the exception of a requirement to provide a non-binding equity commitment letter, the**
11 **commission declines to specify the form or format of information provided in section (d)(1)(E).**
12 **Accordingly, the commission declines to incorporate NRG's proposed change to allow an ap-**
13 **plicant to provide an attestation of a proposed financing plan.**

14

15 *Proposed §25.510(d)(2) –NOI to Apply Requirements*

16 Proposed §25.510(d)(2) states that in concurrence with the NOI, the applicant must separately file a
17 letter with the commission stating the applicant's corporate name and the MW capacity that the re-
18 quested loan amount will finance.

19

20 TIEC recommended requiring applicants to include the anticipated COD in the NOI letter separately
21 required by §25.510(d)(2) and also suggested adding language to the rule to track loan program pro-
22 gress at least quarterly for transparency. TIEC commented that the public should have visibility into

1 this program, and the information submitted in the NOI will be publicly available in ERCOT reports
2 later anyway.

3

4 TPPA requested clarification on whether the letter filed with the commission is publicly available
5 information.

6

7 Calpine recommended requiring a demonstration of creditworthiness at the time of NOI submission.

8 Calpine stated that this will assist the commission in evaluating an applicant's financial fitness and

9 access to financing for the 40 percent of anticipated project costs not covered by the TEF loan.

10

11 *Commission Response*

12

13 **The commission notes that estimated COD in the NOI may be commercially sensitive infor-**
14 **mation. The fact that some NOI information may become public through ERCOT data tracking**
15 **does not consider the status of an applicant's business activities at the time of NOI submission.**

16 **The commission declines TIEC's request to include estimated COD in the letter separately filed**
17 **under paragraph (d)(2). Further, the commission declines to add specific language to track**
18 **loan program progress because any such reporting is beyond the scope of this rule.**

19

20 **In response to Calpine's position that the NOI should include a showing of creditworthiness,**
21 **the commission notes that the NOI is not a TEF loan application. Instead, the NOI will serve as**
22 **a diagnostic tool to allow the commission to gauge potential program participation. The**

1 **commission will appraise an applicant’s creditworthiness upon submission of an application.**
2 **The Commission therefore declines to make Calpine’s requested change.**

3

4 **The commission confirms that the letter filed pursuant to paragraph (d)(2) will be publicly**
5 **available.**

6

7 *Proposed §25.510(e)–Application Requirements and Process*

8 Proposed §25.510(e) prescribes the form and manner a loan application must be submitted to the
9 commission.

10

11 NRG requested the provision specify June 1, 2024 as the date the commission will begin accepting
12 applications.

13

14 TCPA requested communication on whether applications are going to be reviewed in batches with an
15 opening and closing date.

16

17 *Commission Response*

18 **The commission modifies the rule to state that the application process will be open for a mini-**
19 **imum of an eight-week window, beginning on June 1, 2024, at 12:00am and through at least July**
20 **27, 2024, at 11:59pm. The commission also modifies the rule to allow the executive director to**
21 **extend the application window by providing public notice of the extension at least 30 days prior**
22 **to the previously announced window closure date. In addition, the commission further modifies**
23 **the rule to allow the executive director to open additional application windows if necessary to**

1 **achieve the objectives of the TEF. The rule is also modified to state that an applicant that**
2 **submits an NOI will receive a description of the application and due diligence process.**

3

4 ***Proposed §25.510(e)(4)(A)–Application Requirements and Process***

5 Proposed §25.510(e)(4)(A) requires an applicant to submit a copy of any information submitted to
6 ERCOT regarding the applicant’s attestation of market participant citizenship, ownership, or head-
7 quarters.

8

9 TPPA recommended requiring a separate attestation directly from the applicant to ensure compliance
10 with the Lone Star Infrastructure Protection Act (LSIPA) in case the applicant has yet not submitted
11 such information to ERCOT by the time it applies for a TEF loan. TPPA explained that if an applicant
12 has not submitted such information to ERCOT at the time of the application because the facility has
13 not yet been constructed and interconnected, the applicant could therefore apply for a TEF loan with-
14 out providing this information.

15

16 ***Commission Response***

17 **The commission agrees with TPPA’s recommendation and modifies subsection (e)(4)(A) to re-**
18 **quire an applicant to submit a direct attestation relating to the information required under this**
19 **subsection, if this information has not already been submitted to ERCOT.**

20

21 ***Proposed §25.510(e)(4)(A), (f)(1)(A)(i), and (f)(1)(A)(iii)–Application Requirements and Process***

22 Proposed §25.510(e)(4)(A) requires applicants to submit information regarding attestation of market
23 participant citizenship, ownership, or headquarters. Proposed §25.510(f)(1)(A)(i) and §f)(1)(A)(iii)

1 establish that the commission will evaluate applications, in part, based on the applicant's history of
2 electricity generation in Texas and the United States.

3

4 Wartsila recommended granting equal consideration to applicants from any North American country
5 or applicants with a successful history of electricity generation within North America.

6

7 *Commission Response*

8 **The commission declines to modify the rule as recommended by Wartsila because it is unnec-**
9 **essary and out of scope. The commission's review under PURA §34.0104(c)(1)(C) is limited to**
10 **an evaluation of each applicant's history of operations in Texas and the United States, but the**
11 **statute does not preclude evaluation of the applicant's operations in other North American**
12 **countries.**

13

14 **The commission will evaluate sponsors and applicants based on experience developing, owning,**
15 **and operating relevant power generation assets in Texas and the United States. However, the**
16 **commission will evaluate applications holistically, and a lack of experience in Texas or the**
17 **United States will not in itself disqualify an applicant from being eligible for or receiving a TEF**
18 **loan.**

19

1 *Proposed §25.510(e)(4)(B)–Applicant’s Prior Experience with Dispatchable Electric Generating*
2 *Facilities*

3 Proposed §25.510(e)(4)(B) details evidence of the applicant’s prior experience with siting, permit-
4 ting, financing, constructing, commissioning, operating, and maintaining dispatchable electric gener-
5 ating facilities to provide reliable electric service in competitive energy markets.

6

7 TPPA recommended not requiring evidence of an applicant’s prior experience with dispatchable elec-
8 tric generating facilities because this conflicts with PURA §34.0104(c)(1)(C), which requires the
9 commission to evaluate an applicant’s entire history of electric generation operations, which may
10 include non-dispatchable generation operational experience. TPPA requested additional information
11 on the necessity of this provision.

12

13 Calpine recommended requiring evidence that an applicant has fifteen years of experience with siting,
14 permitting, financing, constructing, commissioning, operating, and maintaining dispatchable electric
15 generating facilities to provide reliable electric service in competitive energy markets.

16

17 *Commission Response*

18 **The commission agrees with TPPA that the word “dispatchable” can be deleted to account for**
19 **an applicant’s experience with any type of generation, not just dispatchable facilities, to align**
20 **the rule more closely with the statute. The commission modifies the rule accordingly.**

21

22 **The commission rejects Calpine’s recommendation to require at least fifteen years of experi-**
23 **ence because it would unnecessarily limit potentially feasible projects and because the**

1 **commission will assess an applicant’s overall history of electric generation operations as one of**
2 **the evaluation criteria.**

3

4 *Proposed §25.510(e)(4)(C)(i)–Ability to Fund Project*

5 Proposed §25.510(e)(4)(C)(i) requires evidence of an applicant’s creditworthiness, including an eq-
6 uity commitment letter demonstrating the ability to fund the necessary project equity (40 percent of
7 the remaining estimated cost of construction) plus the required three percent construction escrow
8 deposit amount.

9

10 CPV supported the proposed rule’s requirement for firm equity commitments to be equal to 40 percent
11 of the project cost.

12

13 To address possible contingencies not included in the initial estimated cost of construction, Calpine
14 suggested requiring applicants to cover contingency costs with non-TEF sources. Calpine recom-
15 mended that the additional amount either be five percent of the overall estimated project costs or
16 another amount to be determined on a case-by-case basis, as approved by the commission, based on
17 a quantitative risk analysis. Calpine further recommended that an applicant should be required to
18 confirm that the contingency funds are liquid, immediately available, and unrestricted funds, dedi-
19 cated exclusively to development of the dispatchable generation facility for the purpose of mitigating
20 the facility’s performance risk.

21

22 Vistra recommended adding “at least” in front of “40 percent of the remaining estimated cost of
23 construction.”

1

2 LCRA recommended removing the term “equity” from §25.510(e)(4)(C)(i) while TIEC and CPV also
3 suggested replacing “equity” with “financial commitment letter.” LCRA commented that non-TEF
4 costs may be funded through debt, not equity. TIEC stated that applicants may want to borrow less
5 than 60 percent of project costs from TEF and may want to finance the remaining costs rather than
6 use equity and recommended that applicants should be allowed to do so.

7

8 Golden Spread recommended reducing the equity commitment from 40 percent to 20 percent because
9 electric cooperatives may be unwilling or unable to contribute 40 percent equity to a construction
10 project.

11

12 *Commission Response*

13 **The commission agrees with Calpine that contingency costs must be covered by non-TEF**
14 **sources. However, the commission declines to set a particular contingency cost level in the rule**
15 **because such a determination will be made on a case-by-case basis.**

16

17 **An applicant must provide evidence of its ability, or the ability of the borrower’s corporate**
18 **sponsor, to fund the required balance of 40 percent or more of the project costs that are not**
19 **financed by a TEF loan. The balance of financing separate from the TEF loan can be structured**
20 **and proposed at the discretion of the applicant; however, a non-binding equity commitment**
21 **letter for the balance of costs plus the required three percent construction escrow deposit**
22 **amount is required under §25.510(d)(1), in accordance with PURA §34.0104(g). The commis-**
23 **sion modifies the provision accordingly. The commission declines to require a specific equity**

1 **commitment for the final funding of the non-TEF portion of the financing requirement; how-**
2 **ever, the commission modifies the proposed rule to state that if an applicant is proposing to use**
3 **equity to fund any of the non-TEF portion, the applicant must provide a binding equity com-**
4 **mitment letter with the application. Therefore, it is unnecessary to use 20 percent as an equity**
5 **requirement, as requested by Golden Spread. Accordingly, the commission modifies**
6 **§25.510(e)(4)(c)(i) and (h)(1)(B)(i) to remove the requirement for at least 40 percent equity and**
7 **to clarify that other sources of funding besides equity contributions may be used to fund the**
8 **non-TEF portion of the project costs.**

9
10 *Proposed §25.510(e)(4)(C)(ii)–Applicant Financial Statements*

11 Proposed §25.510(e)(4)(C)(ii) requires evidence of an applicant’s creditworthiness including finan-
12 cial statements, statements of the applicant’s total assets, total liabilities, net worth, and credit ratings
13 issued by major credit rating agencies.

14
15 Advanced Power recommended that a lack of credit rating at the time the application is submitted
16 should not disqualify a project from receiving TEF funding; otherwise, the commission risks “signif-
17 icantly limiting the number of applications received to only those larger developers that have a credit
18 rating at the time the application is filed.” Instead, Advanced Power proposed that applicants may
19 demonstrate the ability to arrange credit financing and an established track record of successfully
20 financing thermal generation projects. Advanced Power made similar comments on subsection
21 (d)(1)(E).

1 WattBridge suggested requiring financial statements only if the applicant has financial statements
2 available. WattBridge noted that power plant developers often create a new and separate legal entity
3 for specific projects, and this new entity may not have financial statements prior to financial closing.
4 In addition, WattBridge stated that projects' financial viability to repay the TEF loan hinges on ER-
5 COT market revenues and the generation resource meeting the required availability and performance
6 metrics.

7

8 NRG recommended requiring financial statements and associated total assets, liabilities, net worth,
9 and credit ratings to come from the applicant or the entity providing the applicant with the equity
10 commitment letter under §25.510(e)(4)(C)(i).

11

12 CPV recommended qualifying the requirement to provide credit ratings with "if applicable" to allow
13 for privately held companies to participate in the TEF.

14

15 HEN suggested requiring credit ratings only if the applicant is rated by major credit agencies. Pri-
16 vately held companies may not have a credit rating but can provide financial statements to demon-
17 strate creditworthiness.

18

19 Wartsila and GRIT recommended adding three new subparagraphs adopting a holistic review of an
20 applicant's net worth, liquidity, and other financial statements.

21

22 ***Commission Response***

1 **The commission modifies the rule to require an applicant to provide financial statements, if**
2 **available, for itself and its parent company. The commission also clarifies that sponsors or**
3 **applicants are not required to have credit ratings issued by major credit rating agencies but do**
4 **need to provide audited financial statements for a minimum of five years. If sponsors or appli-**
5 **cants do have credit ratings, those ratings will be considered during the TEF administrator’s**
6 **due diligence.**

7
8 *Proposed §25.510(e)(5)–Application Requirements and Process*

9 Proposed §25.510(e)(5) describes the project information that is required to be included in the appli-
10 cation process.

11
12 Sierra Club recommended adding a requirement for applicants to show how the facility will contribute
13 to meeting “overall energy use” in the ERCOT region.

14
15 *Commission Response*

16 **The commission declines to modify the rule as requested by the Sierra Club because it is un-**
17 **necessary given the performance standards that are required under §25.510(h)(1)(A). How-**
18 **ever, applicants are free to include this information in the narrative response to**
19 **§25.510(e)(5)(A).**

20
21 *Proposed §25.510(e)(5)(A)–Project Information*

22 Proposed §25.510(e)(5)(A) requires an applicant to provide a narrative explanation that details how
23 the facility will contribute to reliability during peak winter and summer load in the ERCOT region,

1 including the project's plans for ensuring adequate fuel supplies and preparations for compliance with
2 16 TAC §25.55 (relating to Weather Emergency Preparedness).

3

4 Vistra recommended that registration with ERCOT as a generation entity should be required of all
5 facilities receiving state funds, such as from the TEF, to ensure the weatherization requirements of
6 §25.55 apply and to be consistent with SB 2627's goal of improving reliability.

7

8 ***Commission Response***

9 **The commission agrees with Vistra and, while registration of the facility's GR as a generation**
10 **resource with ERCOT already would require the recipient to adhere to the requirements of**
11 **§25.55, the commission modifies the rule to explicitly require the electric generating facility**
12 **qualifying for the TEF loan to adhere to the requirements of §25.55.**

13

14 ***Proposed §25.510(e)(5)(C)–Project-Specific Information***

15 Proposed §25.510(e)(5)(C) requires an applicant to submit project-specific information that will al-
16 low the commission to determine and evaluate the viability and attributes of the electric generating
17 facility.

18

19 Shell Energy recommended the commission require that projects undergo a certification of feasibility
20 by an independent engineer to address the feasibility of the project, its location, and all supporting
21 commercial agreements relating to fuel, water, site control, and interconnection.

22

1 USA Compression recommended that the application allow applicants to list each “individual electric
2 generating facility” that is part of the applicant’s “new/upgraded electric generating facility”; provide
3 separate descriptions of the operational attributes of each individual electric generating facility that
4 is a part of the applicant’s new or upgraded electric generating facility; and include separate construc-
5 tion schedules and commercial operations dates for each individual electric generating facility that is
6 a part of the applicant’s new/upgraded electric generating facility.

7

8 *Commission Response*

9 **The commission agrees with Shell Energy and adds subsection (f)(3) to the proposed rule to**
10 **state that an applicant must submit a feasibility study at the applicant’s expense, prepared by**
11 **an independent engineer, that aligns with leading industry practice for review by the TEF ad-**
12 **ministrator. The feasibility study is not required at the time of application but can be included**
13 **in the application as supporting documentation if it is available.**

14

15 **The commission disagrees with USA Compression’s recommendation to permit listing, descrip-**
16 **tions, and construction schedules and commercial operations dates for individual facilities be-**
17 **cause the aggregation of discrete facilities to meet the requirements of a TEF loan is not per-**
18 **missible. However, the commission notes that a single facility may comprise multiple GRs, and**
19 **additional detail for each GR is appropriate. The commission modifies the provision to explic-**
20 **itly require resource-level detail.**

21

1 ***Proposed §25.510(e)(5)(C)(i) – Application Requirements and Process***

2 Proposed §25.510(e)(5)(C)(i) requires a table with the resource operation attributes, including name-
3 plate capacity, seasonal net maximum sustainable ratings during winter and summer, cold and hot
4 temperature start times, and the original equipment manufacturer’s estimated EAF calculation in
5 NERC GADS be submitted during the application.

6

7 USA Compression recommended the commission prioritize flexible, fast-ramping, multi-hour-dura-
8 tion dispatchable generation projects for In-ERCOT Generation Loans and to add “resource ramp
9 rate” as an attribute as a required field in the table.

10

11 ***Commission Response***

12 **Though it is not definitive, ramp rate is an indicator of generator flexibility, which can support**
13 **reliability. The commission notes that ramp rate is listed in §25.510(f)(1)(A)(iv). Therefore, the**
14 **commission modifies the rule to align the requested information in §25.510(e) with the evalua-**
15 **tion criteria in §25.510(f).**

16

17 **However, the commission declines to specifically prioritize an application for flexible, fast-**
18 **ramping, multi-hour-duration dispatchable generation projects because the commission prior-**
19 **itizes applications that best meet statutory criteria, and the TEF administrator will assess pro-**
20 **jects holistically after first accounting for statutory criteria.**

21

1 *Proposed §25.510(e)(5)(C)(i), (f)(1)(A)(ii), and (f)(1)(A)(iv)—Application Requirements and Pro-*
2 *cess, Evaluation Criteria*

3 Proposed §25.510(f)(1)(A)(ii) evaluates the applicant's quality of services and management, as
4 shown by the applicant's prior history of electricity generation in Texas and the United States, and
5 proposed organizational structure for the project for which the applicant seeks a loan. Proposed
6 §25.510(f)(1)(A)(iv) evaluates the applicant's resource operation attributes, including fuel type and
7 heat rate, seasonal net maximum sustainable rating, resource ramp rate, and capacity factor.

8

9 Wartsila recommended implementing a three-step framework to evaluate loan applications so that
10 funding is prioritized based on project readiness, financial solvency, and resource attributes. Wartsila
11 suggested that applicants must earn a satisfactory evaluation in each phase of the application process.
12 Wartsila's proposed three-phase evaluation process incorporated the following steps: verification of
13 project diligence and timeline; evaluation of applicant creditworthiness and project suitability; and
14 evaluation of proposed project's resource attributes and benefit to the ERCOT bulk power system.

15

16 *Commission Response*

17 **The commission will evaluate applications for program eligibility based on the requirements**
18 **enumerated in PURA §§34.0104 and 34.0106 and for compliance with the criteria detailed in**
19 **§25.510(f). Applications will be assessed based on their response to statutory and regulatory**
20 **evaluation criteria, which does not necessarily align with a project's phase of development.**

21

22 **Each application will undergo a due diligence review, an evaluation of the applicant's or spon-**
23 **sor's creditworthiness, and an assessment of project feasibility, to include a review of the**

1 **proposed resource’s operational attributes, as detailed in the evaluation criteria enumerated in**
2 **§25.510(h). Accordingly, it is unnecessary to modify the rule as recommended by Wartsila.**

3
4 ***Proposed §25.510(e)(5)(C)(ii)–Project-Specific Information***

5 Proposed §25.510(e)(5)(C)(ii) requires the applicant to submit a statement indicating whether the
6 electric generating facility will serve an industrial load or PUN, and if so, a description of how the
7 electric generating facility will primarily serve and benefit the ERCOT bulk power system given its
8 relationship to an industrial load or PUN. Additionally, the rule requires an applicant to state whether
9 full generation output would be available to the ERCOT bulk power system during any EEA, and
10 provide a copy of any information submitted to ERCOT regarding PUN net generation capacity avail-
11 ability.

12
13 HEN recommended revisions to strengthen the requirements for a GR located within a PUN or serv-
14 ing a retail load to qualify for a loan. Specifically, HEN recommended the statement include details
15 of all obligations or commitments of the generating facility to provide capacity to the industrial load
16 or PUN as well as information regarding the facility’s metering and interconnection arrangements.

17
18 ***Commission Response***

19 **The commission agrees with HEN’s recommendation and modifies the rule to specify that a**
20 **generating facility that is serving an industrial load or PUN must provide an attestation relating**
21 **to (i) the net nameplate capacity that will be dedicated to ERCOT, (ii) details of the facility’s**
22 **obligations or commitments to the industrial load or PUN, and (iii) availability of its entire**
23 **available capacity to ERCOT during an energy emergency alert. However, the commission**

1 **notes that the metering and interconnection arrangements should be reflected on the required**
2 **one-line diagrams and declines to restate that requirement here.**

3

4 ***Proposed §25.510(e)(5)(C)(iii)–Project-Specific Information***

5 Proposed §25.510(e)(5)(C)(iii) states an applicant should provide a one-line diagram of the proposed
6 project, if available.

7

8 TPPA requested that the commission provide a definition and clarify the meaning of a “one-line dia-
9 gram.” Specifically, TPPA asked whether the requested one-line diagram would be at the plant level
10 or for transmission planning, as there is a substantial difference between the two. TPPA recom-
11 mended that, if the one-line diagram is to “locate the project within the ERCOT transmission system”
12 then it be a “firm” requirement and the phrase “if available” be removed from the rule.

13

14 ***Commission Response***

15 **The commission notes that the term “one-line diagram” is a generally understood term in the**
16 **electric industry and does not require a definition. However, the commission agrees that addi-**
17 **tional clarity regarding the subject matter of the requested “one-line diagram” is appropriate.**
18 **The commission notes that the requested one-line diagram is at the facility level. The commis-**
19 **sion also agrees with TPPA’s suggestion to remove the phrase “if available,” as a proposed one-**
20 **line diagram should be available at the time of application.**

21

1 *Proposed §25.510(e)(5)(C)(vi) and (e)(5)(C)(xii)—Project-Specific Information*

2 Proposed §25.510(e)(5)(C)(vi) requests a description of the electrical interconnection plan, including,
3 among other things, a copy of the executed standard generation interconnection agreement (SGIA).

4 Proposed §25.510(e)(5)(C)(xii) requests a proposed project schedule with anticipated dates for major
5 project milestones, such as execution of the SGIA.

6

7 Vistra and HEN recommended changing the requirements in §25.510(e)(5)(C)(vi) for submitting for
8 the signed SGIA. Vistra suggested removing the SGIA requirement and instead requiring completion
9 only of the screening study as an application prerequisite because it is not required by statute and
10 would “impede the TEF program’s ability to meet the statutory deadline of disbursing all initial funds
11 before December 31, 2025.” Vistra explained completion of a screening study, which takes 45-90
12 days, is a reasonable filter to show that an applicant is sufficiently committed to the proposed projects.
13 Vistra also noted other SGIA prerequisites, such as a full interconnection study with the TSP, may
14 take up to a year to complete and that a generator will be incurring administrative, engineering, and
15 legal fees during that time. HEN recommended requiring the provision of the executed interconnec-
16 tion agreement in the loan application only if available because a utility may not execute an SGIA
17 until the full interconnection studies are completed. HEN noted that such a change would also align
18 the provision with 25.510(e)(5)(C)(xii) which requires the proposed project schedule, including the
19 expected date to execute the interconnection agreement.

20

21 TPPA requested clarity as to whether an executed SGIA is a requirement for the application or if a
22 timeline with an anticipated date of execution would satisfy both proposed §25.510(e)(5)(C)(vi) and
23 (e)(5)(C)(xii). TPPA also recommended that the rule require a signed letter of intent or memorandum

1 of understanding for MOUs and electric cooperatives instead of a full SGIA because the SGIA re-
2 quirement would force MOUs and electric cooperatives to execute an interconnection agreement with
3 themselves when interconnecting their own generation to their own transmission facilities.

4
5 Wartsila approved of the requirement for a signed SGIA and recommended removing the language
6 “if completed” related to the interconnection screening study found in §25.510(e)(5)(C)(vi).

7
8 *Commission Response*

9 **The commission agrees with commenters that completion of the SGIA is a step that arrives later**
10 **in project planning and, as a result, requiring applicants to submit a copy of an executed SGIA**
11 **may unnecessarily limit the number of eligible projects. Therefore, the commission agrees with**
12 **HEN’s recommendation to eliminate the requirement and modifies the rule accordingly. In**
13 **response to TPPA, the commission modifies (e)(5)(C)(xii) to require a projected date for execu-**
14 **tion of the SGIA only if applicable.**

15
16 *Proposed §25.510(e)(5)(C)(ix)–Project-Specific Information*

17 Proposed §25.510(e)(5)(C)(ix) requires a list of all required environmental, construction, and operat-
18 ing permits with current approval status.

19
20 Advanced Power recommended the commission require a comprehensive permitting matrix that in-
21 cludes an outline of timeframes and methodology, or confirmation that certain permits are not re-
22 quired. Advanced Power expressed concern that the proposed language creates ambiguity regarding
23 the required status of the permitting included in the matrix. Advanced Power also suggested the

1 provision be revised for clarity regarding the required status of all necessary permits at the time the
2 application is submitted.

3

4 Sierra Club recommended requiring applicants to give a timeline for receiving final permit approval.

5

6 *Commission Response*

7 **The commission confirms that applicants will be required to submit permitting information**
8 **and status on all necessary permits and approvals as part of the application process. The nec-**
9 **essary permits depend, in part, on the design and characteristics of the facility. Thus, the com-**
10 **mission declines to provide an exhaustive and exclusive list. The commission will use this in-**
11 **formation to evaluate project feasibility as described under §25.510(f)(2)(D).**

12

13 *Proposed §25.510(e)(5)(C)(x)–Project-Specific Information*

14 Proposed §25.510(e)(5)(C)(x) requires a description of the air emissions compliance plan, including
15 evidence of receipt of any required air emissions credits.

16

17 WattBridge recommended removing the requirement to have air emission credits in hand at time of
18 application due to the expense and risk associated with their purchase prior to the start of construction.

19

20 *Commission Response*

21 **Section 25.510(e)(5)(C)(x) does not require the applicant to have air emissions credits in hand**
22 **at the time of application, though an applicant may submit any evidence showing that it has**
23 **obtained air emissions to demonstrate project readiness.**

1

2 *Proposed §25.510(e)(5)(C)(xi)–Project-Specific Information*

3 Proposed §25.510(e)(5)(C)(xi) requests a detailed financial forecast of cash available for debt service,
4 covering a period equal to the repayment period of the loan, including sources of revenue and an
5 annual operating and maintenance budget.

6

7 Calpine recommended requiring applicants to include financial forecasting of cash available for emer-
8 gency conditions in addition to the currently required financial forecasting. Further, Calpine sug-
9 gested the commission should give preference to applicants who can demonstrate sufficient financial
10 resources to address emergency circumstances to ensure public confidence that a TEF loan recipient
11 will be ready and available to perform in the event of an emergency.

12

13 Vistra recommended adding the requirement of sources of capital to §25.510(e)(5)(C)(xi).

14

15 *Commission Response*

16 **The commission confirms that, as part of the application process, the borrower will be re-**
17 **quested to provide a detailed financial model including forecasted revenues, expenses, cash**
18 **flows, and all financial statements. The commission modifies the rule to reflect this.**

19

20 **The commission declines, however, to require applicants to demonstrate access to specific fi-**
21 **nancial resources for use in emergency conditions. Facilities must adhere to the commission’s**
22 **weather preparedness requirements under §25.55, and thus financial resources needed to meet**
23 **those regulations will already be incorporated into the project’s financial forecasts.**

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Proposed §25.510(e)(6)–Estimated Cost

Proposed §25.510(e)(6) lists the costs to be included in the estimated costs provided in a project application.

Shell Energy recommended that development fees associated with affiliate transactions and any dedicated PUN costs should not be considered a project cost for purposes of the loan program and that no program funds should be forwarded for payment of these types of items.

TPPA recommended requiring projections for ongoing maintenance and operational costs, such as staffing and fuel, to ensure efficient use of taxpayer dollars.

NRG suggested that project costs should include a reasonable project contingency of up to 5 percent for potential unknown costs, loan interest accrued during construction, and property tax payments. NRG stated the inclusion of such costs is standard industry practice and recommended these costs be explicitly stated to be covered by a TEF loan to remove any ambiguity.

CPV recommended including additional estimated project costs in §25.510(e)(6) for items such as consultants, contingency costs, and taxes and insurance.

TCPA recommended if the commission permits PUNs to qualify for the TEF, no less than 51 percent of total facility net energy output in the ERCOT wholesale market should be eligible for a loan. TCPA argued that the eligible amount of the loan should be tied directly to the percentage of total net energy

1 output in the ERCOT wholesale market. TCPA added that costs directly attributable to or associated
2 with the portion that serves the PUN or industrial load should not be eligible.

3

4 HEN recommended the commission require applicants to provide total estimated dollar cost per MW
5 so that applications can be comparatively evaluated.

6

7 Calpine and HEN requested the commission clarify what costs are intended to be included in
8 §25.510(e)(6)(H), related to interest rate protection costs. HEN stated that because the interest rate
9 in the loan is fixed at three percent, protection should not be required for the loan itself. HEN sug-
10 gested that, if the intent is for the interest rate protection to apply to the financing for the remaining
11 40 percent of the project, such protection may not be necessary or applicable in all instances.

12

13 *Commission Response*

14 **The commission confirms that applicants must include all estimated projects costs directly re-**
15 **lated to the project under consideration for a TEF loan. These costs should be described in**
16 **detail in the independent engineer's report described in (f)(3) or other supporting information**
17 **submitted by the applicant. Where the costs in CPV's list are directly related to the project**
18 **under consideration, the commission confirms that these costs should be submitted as part of**
19 **an application. However, the commission disagrees with NRG's suggestion for contingency**
20 **costs to be included because if a contingency occurs and must be covered by the TEF, it could**
21 **result in the TEF loan funding more than 60 percent of project costs. Similarly, the commission**
22 **disagrees with NRG's suggestion for interest accrued during construction to be covered by a**
23 **TEF loan because the TEF loan is intended to fund dispatchable generation construction**

1 **directly, not associated financing costs. These two costs must be funded through non-TEF**
2 **sources.**

3

4 **The commission agrees with Shell Energy and TCPA that costs for a PUN that will finance**
5 **provision of service to the PUN and not to the ERCOT market should not be eligible for a TEF**
6 **loan. The commission accordingly modifies (g)(1) to clarify that in the case of an electric gen-**
7 **erating facility that serves an industrial load or PUN, eligible costs will consist of no more than**
8 **60 percent of a percentage of total estimated facility costs equal to the percentage of the total**
9 **capacity of the facility that is dedicated to ERCOT. However, the commission declines to spec-**
10 **ify in the rule that costs for affiliate transactions are not allowed because it is unnecessary.**

11

12 **The commission declines to modify the rule as suggested by TPPA because a financial forecast**
13 **that includes an operating and maintenance budget is already required in (e)(5)(C)(xi).**

14

15 **The commission agrees with HEN that interest rate protection costs are not required as TEF**
16 **loans will be fixed-rate loans and removes the provision. However, the commission disagrees**
17 **with HEN's suggestion to require applicants to submit their dollars per MW costs. Considera-**
18 **tion of total estimated costs is a statutory requirement. Applicants must provide, and the com-**
19 **mission must evaluate, the total estimated costs of the facility.**

20

21 **Calpine recommended specifying acceptable documentation to adequately prove up each category of**
22 **cost described in §25.510(e)(6) and suggested the rule include a process to confirm an applicant's**
23 **projected costs within a margin of accuracy. Calpine proposed that applicants exceeding this margin**

1 must fund the excess through equity, or otherwise without reliance on TEF loan distributions. Calpine
2 stated this would help ensure accountability and the exercise of due diligence by applicants to estimate
3 total project costs. Calpine further recommended the commission be permitted to consider exigent
4 circumstances resulting in increased project costs above the amounts disclosed in the application and
5 should have discretion to continue an applicant's eligibility if an applicant or recipient exceeded the
6 established margin of error.

7

8 Advanced Power recommended the provision be revised to clarify how the estimated project costs
9 will be considered because project developers are unlikely to have executed agreements at the time
10 the application is submitted. Advanced Power explained that project cost estimates may change sig-
11 nificantly during the course of the application, which would make any estimates provided to the com-
12 mission become outdated. Accordingly, Advanced Power suggested that the applicant provide the
13 estimated project costs with the application, and that an opportunity to re-evaluate and potentially
14 update those cost estimates prior to financial close be provided under the rule.

15

16 *Commission Response*

17 **The commission declines to modify the rule as suggested by Calpine and Advanced Power be-**
18 **cause no additional clarification is warranted. The commission modifies the rule at (f)(3) to**
19 **require an applicant to provide an independent engineer's report as a required project docu-**
20 **ment during the due diligence phase of the application, and the TEF administrator will evaluate**
21 **these documents to verify estimated project costs, including contingency costs. Additionally,**
22 **the project costs provided by the applicant should align with the project cost inputs in its finan-**
23 **cial forecast model. Material changes in project cost estimates during the review of an**

1 application will be considered on a project-by-project basis and may result in the reduction of
2 eligible loan proceeds or the rejection of a loan application amount because the material
3 changes in project cost estimates could impact the feasibility of the project or the creditworthi-
4 ness of the applicant or the sponsor.

5

6 *Proposed §25.510(e)(6)(A)–Application Requirements and Process*

7 Proposed §25.510(e)(6)(A) requires applicants to provide expenses related to development, construc-
8 tion, and capital commitments required for the project to reach completion.

9

10 Calpine recommended adding the term “contingency” as one type of commitment required to be pro-
11 vided in the application.

12

13 *Commission Response*

14 **The commission confirms that the level of contingencies required will be determined during**
15 **due diligence and must be funded by sources other than the TEF loan. For these reasons, the**
16 **commission declines to modify the provision as requested by Calpine.**

17

18 *Proposed §25.510(f), §25.510(h)(1)(B)(iii), (h)(1)(G), and (i)(4)–Evaluation Criteria, Loan Term*
19 *and Agreements, Deposits*

20 Proposed §25.510(f) describes the evaluation criteria for a loan application. Proposed
21 §25.510(h)(1)(B)(iii) establishes that the commission will review a borrower’s construction draw-
22 down certificate. Proposed §25.510(h)(1)(G) requires a borrower to register with the commission as
23 a power generation company, unless the borrower is an MOU, cooperative, or river authority, and to

1 register the project facility with ERCOT as a generation resource. Proposed §25.510(i)(4) establishes
2 that the commission will evaluate notices of satisfaction to determine whether a borrower is entitled
3 to withdraw its deposit.

4

5 NRG recommended the commission set a 90-day timeline for application evaluation because appli-
6 cations are not contested cases, and CBG applicants need to quickly begin construction of plants.
7 NRG also stated that it would appreciate a document that outlines the process, including communi-
8 cations protocols.

9

10 TPPA recommended expanding §25.510(f) to include procedural details like discrete timelines for
11 the commission review process, who will be conducting the review, whether evaluators will be per-
12 mitted to contact an applicant directly or request additional information or modifications to an appli-
13 cation, and whether applications would be processed in the order filed or under a prioritization pro-
14 cess. TPPA recommended the same request in §25.510(h)(1)(B)(iii), (h)(1)(G), and (i)(4).

15

16 Sierra Club suggested a process where an applicant can fix a deficiency if it has been identified and
17 recommended that there be parameters in place to prevent repeat deficiencies. Sierra Club also re-
18 quested that applicants be walked through any deficiencies.

19

20 *Commission Response*

21 **The commission declines to provide a specific timeline under which it will evaluate applications,**
22 **as requested by NRG and TPPA. The timeline of the loan approval process will depend on the**
23 **completeness of the application, complexity of the project, and preparedness of the applicant.**

1 **However, the commission agrees with TPPA that additional details on the evaluation process**
2 **would be helpful and adds (f)(3) to include such details.**

3

4 **The commission modifies the rule to add the completeness of an application as an evaluation**
5 **criterion in new subsection (f)(1)(C). Should an application not contain sufficient information**
6 **for the TEF administrator to conduct a thorough evaluation, the TEF administrator may notify**
7 **the applicant through a web-based application system of such a deficiency.**

8

9 *Proposed §25.510(f)(1)–Evaluation Criteria*

10 Proposed §25.510(f)(1) describes the criteria the commission will use to evaluate applications.

11

12 WattBridge suggested prioritizing funding for applicants based on resource attributes and project lo-
13 cation with respect to demand in ERCOT. WattBridge recommended prioritizing projects using a
14 weighted assessment of resource flexibility, fuel efficiency, historical availability, thermal derate, and
15 water consumption. Further, WattBridge suggested prioritizing projects that have flexible fuel-effi-
16 cient resources that derate marginally in extreme weather and can support dual or backup fuel for
17 resilience.

18

19 LSP suggested the commission specify the minimum project requirements as evaluation criteria, place
20 more emphasis on the developer’s track record and reputation, and develop clear and concise guid-
21 ance that assists project developers in evaluating tradeoffs and allows the applicant to propose highly
22 responsive projects that serve the needs of the commission. LSP also requested the commission iden-
23 tify the characteristics or combination of characteristics it values the most and recommended the

1 commission require project applicants state in their applications the minimum amount of TEF debt
2 that would make their projects viable.

3

4 HEN commented that cost is a critical component of prioritization. HEN suggested the commission
5 consider a diversity of resources and geographical locations as components in its evaluation criteria.

6

7 TPPA requested clarification on whether the criteria in §25.510(f)(1) are individual, nondiscretionary
8 requirements or if the requirements are part of a holistic review. TPPA encouraged the commission
9 to consider MOU applicants as eligible for funding.

10

11 Drax Group recommended that the commission evaluate generators that have successfully operated
12 generation assets internationally, even if the applicant has not operated generators domestically.

13

14 TCPA recommended complete transparency on how the applications will be scored and that if there
15 are any criteria beyond the statutory requirements, then those criteria should be communicated to the
16 market very clearly prior to any NOI to apply is taken.

17

18 Calpine, LSP, NRG, LCRA, WattBridge, Vista, and HEN all agreed with the idea of a scoring rubric.
19 HEN further supported a detailed application form with clarification on the specific pieces of evi-
20 dence that the commission is seeking. HEN recommended that the rubric should strike a balance that
21 allows for a variety of projects that meet the fundamental requirements of the statute while not being
22 too specific.

23

1 NRG commented that it is important to understand what needs to be submitted as part of the applica-
2 tion process.

3

4 LCRA recommended that the statutory requirements be the primary criteria that are evaluated. LCRA
5 also requested clarification on what the weighting will be and what specific evidence the commission
6 is looking for in each of the criteria.

7

8 *Commission Response*

9 **The commission intends to evaluate the information requested of and provided by an applicant**
10 **on a holistic basis, as explained above in Loan Application Evaluation Methodology, and so**
11 **disagrees with commenters' requests that the commission declare preference for any particular**
12 **project attribute or applicant profile that is not explicitly enumerated in §25.510(f). Instead,**
13 **the commission seeks to encourage a broad range of applicants to submit viable proposals that**
14 **address the goals of the TEF.**

15

16 **Similarly, it is unnecessary to specify minimum project requirements as evaluation criteria, as**
17 **suggested by LSP, because the proposed rule already contains minimum eligibility criteria to**
18 **apply, which all applicants and projects must meet. It is also unnecessary to require an appli-**
19 **cant to state the minimum amount of a TEF loan that would make its project viable, as sug-**
20 **gested by LSP, because the TEF administrator will determine during due diligence the amount**
21 **of funding each proposed project and applicant merit. However, in response to TPPA's com-**
22 **ments, the Commission notes in that the evaluation criteria are not independent requirements.**

23

1 **The commission agrees with TPPA that MOUs are eligible to apply for a TEF loan and modifies**
2 **§25.510(g)(6) and (h)(1)(G) accordingly.**

3

4 **Regarding commenters' requests to clarify the TEF loan application evaluation process,**
5 **§25.510(c), (e), and (f) together state the bases on which the commission will make its TEF fund-**
6 **ing decisions. Applications will be assessed against these criteria and against other applicants'**
7 **responses to those criteria. Providing a predetermined weighting rubric may unnecessarily**
8 **restrict the commission's ability to evaluate unique proposals. Additionally, providing a scor-**
9 **ing rubric could lead to applicant gamesmanship, and therefore, the commission declines to**
10 **accept the recommendations of Calpine, LSP, NRG, LCRA, WattBridge, Vista, and HEN to**
11 **provide a scoring rubric.**

12

13 ***Proposed §25.510(f)(1)–Evaluation Criteria***

14 Proposed §25.510(f)(1) describes the criteria on which the commission will evaluate a project pro-
15 posal.

16

17 Shell Energy recommended that priority be given to projects that have a robust hedge strategy with
18 contracted revenues for the capacity and energy of the facility with a financially sound energy trading
19 partner. Shell Energy suggested that this requirement would be superior to an evaluation based solely
20 on the forecasted energy price and ensure certainty around contract revenues with credit-worthy coun-
21 terparties.

22

1 NRG recommended that the commission not evaluate a project's hedging strategy as part of its pri-
2 oritization criteria.

3

4 *Commission Response*

5 **The commission will evaluate an application holistically based on its entire business plan, in-
6 cluding market prices and hedging strategies, if any, to determine the feasibility of the project.**

7 **To make this evaluation criterion clearer and align it more closely with the requested infor-
8 mation in §25.510(e)(5)(C)(xi), the commission modifies §25.510(f)(1)(B) to include evaluation
9 of total forecasted revenues generated by the project alongside the total estimated costs of the
10 facility.**

11

12 *Proposed §25.510(f)(1)(A)(i) and (f)(1)(A)(iii)–Evaluation Criteria*

13 Proposed §25.510(f)(1)(A)(i) lists as an evaluation criterion the quality of services and management,
14 as shown by the applicant's prior history of electricity generation in this state and this country. Pro-
15 posed §25.510(f)(1)(A)(iii) lists as an evaluation criterion the history of electricity generation in this
16 state and country.

17

18 TPPA recommended that §25.510(f)(1)(A)(iii) not repeat the language of §25.510(f)(1)(A)(i). TPPA
19 commented that the Legislature presumably intended for separate evaluation criteria to require sepa-
20 rate analyses, and that the proposed rule appears to collapse these two criteria into one.

21

22 *Commission Response*

1 **The commission agrees with TPPA’s recommendation and amends the rule to remove the re-**
2 **dundancy. However, to align more closely with PURA §34.0104(c)(1)(C), the commission re-**
3 **moves the reference in §25.510(f)(1)(A)(i) rather than the reference in §25.510(f)(1)(A)(iii). Alt-**
4 **hough “prior history of electricity generation in this state and this country” can be indicative**
5 **of an applicant’s quality of services and management, it is not the exclusive manner of demon-**
6 **strating such quality. Accordingly, the commission modifies the rule to remove any such im-**
7 **plication.**

8

9 *Proposed §25.510(f)(1)(A)(i), (f)(1)(A)(ii), and (f)(1)(A)(iii)–Applicant’s Quality of Services and*
10 *Management & Efficiency of Operations & History of Electricity Generation Operations*

11 Proposed §25.510(f)(1)(A)(i), (f)(1)(A)(ii), and (f)(1)(A)(iii) evaluate the applicant’s quality of ser-
12 vices and management & efficiency of operation & history of electricity generation operations.

13

14 Calpine recommended the commission determine a minimum number of years’ experience that an
15 applicant must have in each of these categories, or establish a different objective threshold, for an
16 applicant to make a sufficient showing to qualify for a TEF loan.

17

18 *Commission Response*

19 **Although years of experience is a consideration in evaluating an application, the commission**
20 **declines to impose a strict minimum that might exclude an otherwise acceptable application.**

21

1 *Proposed §25.510(f)(1)(A)(i) and (f)(1)(A)(ii)–Applicant’s Quality of Services and Management*
2 *& Efficiency of Operations*

3 Proposed §25.510(f)(1)(A)(i) and (f)(1)(A)(ii) evaluate the applicant’s quality of services and man-
4 agement and efficiency of operations.

5

6 Wartsila recommended the commission consider an applicant’s experience in any Northern American
7 country, instead of limiting it to Texas and the United States. Wartsila provided redlines consistent
8 with its recommendations.

9

10 *Commission Response*

11 **The commission will evaluate sponsors and applicants based on experience developing, owning,**
12 **and operating relevant power generation assets in Texas and the United States. However, the**
13 **commission will review applications holistically, and a lack of experience in Texas or the United**
14 **States will not disqualify an applicant from receiving a TEF loan.**

15

16 *Proposed §25.510(f)(1)(A)(iv)–Applicant’s Resource Operation Attributes*

17 Proposed §25.510(f)(1)(A)(iv) evaluates the applicant’s resource operation attributes, including fuel
18 type and heat rate, seasonal net maximum sustainable rating, resource ramp rate, and capacity factor.

19

20 USA Compression recommended adding cold and hot temperature start times to the evaluation crite-
21 ria to align with the application requirements.

22

23 *Commission Response*

1 **The commission agrees with USA Compression’s recommendation and modifies the rule to**
2 **align more clearly the requested information in §25.510(e)(5)(C)(i) with evaluation criteria in**
3 **§25.510(f)(1)(A)(iv).**

4

5 *Proposed §25.510(f)(1)(A)(v)–Ability to Address Regional and Reliability Needs*

6 Proposed §25.510(f)(1)(A)(v) evaluates the applicant’s ability to address regional and reliability
7 needs.

8

9 TXOGA commented that there is a need for flexibility among resources available to help support the
10 grid by having units throughout the state instead of in major generation pockets like the state currently
11 has installed.

12

13 *Commission Response*

14 **The commission confirms that proposed §25.510(f)(1)(A)(v) does include “ability to address re-**
15 **gional and reliability needs” as a consideration, and no further changes to the proposed rule**
16 **are needed to address siting diversity concerns.**

17

18 **The commission modifies subsection (e)(5)(A) of the rule to explicitly require resources availing**
19 **the TEF funds to adhere to §25.55, Weather Emergency Preparedness.**

20

21 *Proposed §25.510(f)(1)(A)(vii)–Evidence of Creditworthiness*

22 Proposed §25.510(f)(1)(A)(vii) evaluates the applicant’s evidence of creditworthiness and ability to
23 repay the loan on the terms established in the loan agreement.

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Calpine recommended the commission review an applicant’s other assets to determine creditworthiness and that 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. Calpine commented that, if a facility that has received loan proceeds should default on its obligations to ERCOT, the facility would also undoubtedly default on the terms of its loan.

TPPA suggested referencing text from PURA §34.0104(c)(1)(G) (“total assets, total liabilities, net worth, and credit ratings issued by major credit rating agencies”).

Vistra recommended adding “access to capital” to this evaluation criteria.

Commission Response

The commission agrees with TPPA’s suggestion and modifies the rule to include the examples listed in PURA §34.0104(c)(1)(G), which will be considered, if applicable. Although the commission will evaluate other evidence of creditworthiness, if provided, the commission declines to add additional requirements as proposed by Calpine and Vistra.

Proposed §25.510(f)(1)(B)—Nameplate Generation Capacity and Total Estimated Cost

Proposed §25.510(f)(1)(B) evaluates nameplate generation capacity and total estimated costs of the facility for which the loan is requested.

1 CPV recommended removing the total estimated cost from the evaluation criteria as the costs of dis-
2 patchable generation may vary from site to site but will predominantly fall within a predictable range
3 of costs per kilowatt. CPV further stated that utilizing this measure as part of the evaluation tool
4 promotes “gaming” in the application process and an applicant could artificially lower the project’s
5 total cost to receive a loan, only to increase those costs later.

6

7 Vistra recommended that loan applications should be evaluated primarily based on those statutory
8 criteria in SB2627 and that statutory requirements should be prioritized.

9

10 *Commission Response*

11 **The commission recognizes that an applicant’s projected nameplate generation capacity and**
12 **project costs are subject to error and gamesmanship. However, the commission’s ability to**
13 **provide loans using the TEF is limited in terms of MWs and dollars. Applicants are in the best**
14 **position to provide accurate estimates for their projects. Therefore, the commission rejects**
15 **CPV’s recommendation. The commission further notes that PURA §34.0104(d) imposes a**
16 **10,000 MW limitation, and the amount of money held by TEF is finite. Accordingly, consider-**
17 **ation of nameplate capacity and total estimated costs is effectively a statutory requirement.**
18 **Applicants must provide the nameplate generation capacity and total estimated costs of the**
19 **facility. Additional project costs beyond the TEF loan proceeds must be funded by the appli-**
20 **cant.**

21

1 *Proposed §25.510(f)(1)(B) and §25.510(f)(2) – Multiple Evaluation Criteria*

2 Proposed §25.510(f)(1)(B) evaluates nameplate generation capacity and total estimated costs of the
3 facility for which the loan is requested. Proposed §25.510(f)(2) outlines additional considerations for
4 evaluation criteria.

5

6 HEN recommended moving some criteria from the permissive evaluation provision in §25.510(f)(2)
7 to the mandatory evaluation provision in §25.510(f)(1). HEN suggested that most of the evaluation
8 criteria relating to the proposed generating facility itself are not mandatory, and nearly all the man-
9 datory considerations relate to the applicant and not the project. HEN provided redlines consistent
10 with its recommendations, including the addition of a new subparagraph, §25.510(f)(3), that states
11 “As part of its evaluation process, the commission shall consider the portfolio of qualified loan ap-
12 plications and award loans to a diversity of generating facilities to enhance reliability and resiliency,
13 including different geographical locations with ERCOT, differing fuel types and fuel supply sources
14 and arrangements and a range of commercial operation dates. Final loan awards may not exceed the
15 amount requested by the applicant in its application and evaluated by the commission in selecting
16 among qualified loan applicants.”

17

18 Drax Group recommended adding new subsections §25.510(f)(2)(K) and (f)(2)(L) for onsite fuel ca-
19 pabilities to enhance reliability by encouraging generation with onsite fuel storage capabilities. Drax
20 Group provided redlines consistent with its recommendations.

21

22 NRG stated that neither the project technology nor the project costs should factor in as part of the
23 prioritization to review.

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Vistra commented that access to capital or liquidity is a reasonable addition, but additional evaluation criteria added by the commission should be prioritized as secondary features to the statutory criteria.

WattBridge commented that it is concerned about timing and recommended that some of the priorities be scored on a pass or fail basis.

Commission Response

The commission will evaluate applications holistically using the criteria and priorities described in the rule and this document. In response to commenters' suggestions to evaluate the operational attributes, including fuel types and project technology, the commission modifies the rule to clearly indicate that the information requested in (e)(5)(C)(i) will be part of the evaluation criteria in (f)(1)(A)(iv).

The commission declines to explicitly prioritize the diversity of resource type and geographic location of proposed projects because the applicant pool is unknown at this time, and such a restriction could unnecessarily limit the number of projects funded through the TEF.

Although onsite fuel storage capability may be beneficial, it is not a necessary attribute for an application. ERCOT currently procures firm fuel supply service (FFSS) for reliability purposes. The commission declines to further incentivize this program via additional priority in evaluation criteria. However, the expected ability to provide FFSS can be considered in other criteria where applicable (e.g., forecasted revenue).

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The commission has already given more weight to statutory criteria, as suggested by Vistra, and no changes are needed as a result.

Proposed §25.510(f)(2)–Additional Considerations for Evaluation Criteria

Proposed §25.510(f)(2) outlines additional considerations that the commission may use to evaluate applications.

Calpine recommended prioritizing applications that do not need to draw on the loan after COD and applications that can demonstrate firm fuel supply capabilities as this will ensure that the first loan recipients have sufficient access to capital to cover the requisite 40 percent of anticipated construction costs, plus the three percent deposit, plus contingencies, while also providing an incentive to undertake construction of new dispatchable generation in line with the intent of SB 2627. Calpine suggested that this prioritization would also serve to protect taxpayers’ interests by increasing the likelihood that the applicant will not default on its loan payment obligations. It also recommended that the commission 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. Calpine provided redlines consistent with its recommendations.

Shell Energy recommended giving preference to projects based on locational advantages to serve load, proximity to load centers, lower cost to interconnect, lower project cost per MW, and ability to reduce congestion.

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Targa recommended adding a requirement specifying that a PUN that serves a critical gas supplier or critical customer is eligible for a loan due to the reliability function it serves, regardless of whether it provides excess energy to the ERCOT grid.

Commission Response

The commission intends to consider the complete financial picture associated with a proposed project and declines to place special emphasis on whether an applicant will need to utilize TEF proceeds after COD, as suggested by Calpine.

Although onsite fuel storage capability may be beneficial, such capability is already incentivized via the existence of FFSS. The commission declines to further incentivize this program via additional priority in evaluation criteria. However, the expected ability to provide FFSS can be considered in other criteria where applicable (e.g., forecasted revenue and the ability to address reliability needs).

In response to Shell Energy’s comments, the commission notes that there are already programs in place to encourage siting GRs near load and declines to further incentivize it in the application evaluation process. Furthermore, the commission notes that the ability to address regional and reliability needs is already an evaluation criterion under §25.510(f)(1)(A)(v). The commission will review applications and their ability to meet the goals of the TEF holistically.

1 **Regarding Targa’s recommendation, PURA §34.0104(a) and §34.0106(b) collectively require**
2 **that TEF loans explicitly prioritize the provision of power to the ERCOT power region over**
3 **industrial loads or PUNs. It does not contain an exception for load attributable to critical gas**
4 **suppliers or critical customers. Without a statutory basis for Targa’s recommendation, the**
5 **commission declines to modify the proposed rule as requested.**

6

7 TPPA requested more details about considerations of the permissive criteria. TPPA stated that appli-
8 cants must understand evaluation criteria and that, if the commission uses different set of criteria to
9 evaluate one application versus another, it will be difficult to ensure applications were evaluated fairly
10 and non-arbitrarily.

11

12 *Commission Response*

13 **The commission declines to provide more detail about the permissive evaluation criteria be-**
14 **cause it is unnecessary. Both the mandatory and permissive sets of criteria are described in the**
15 **rule, and all applicants will be evaluated by those same sets of criteria.**

16

17 *Proposed §25.510(f)(2)(H)–Sufficiency of the Applicant’s Proposed Sources of Equity*

18 Proposed §25.510(f)(2)(H) indicates that the commission may consider the sufficiency of the appli-
19 cant’s proposed sources of equity to cover the costs of the facility not funded through a loan provided
20 under this section.

21

22 LCRA recommended including “debt” as a funding source that applicants can use for the non-TEF-
23 funded project costs.

1

2 *Commission Response*

3 **Consistent with LCRA’s suggestion, the commission modifies (f)(2)(H) by adding “or other**
4 **funding sources” to reflect alternative means of financing the facility costs not funded through**
5 **a loan under this section.**

6

7 *Proposed §25.510(g)(1)–Loan to be no more than 60 percent of Estimated Cost*

8 Proposed §25.510(g)(1) states that the approved loan will consist of no more than 60 percent of the
9 estimated cost of the electric generating facility to be completed.

10

11 Sierra Club suggested allowing interconnection costs to be included in project cost information.

12

13 Wartsila requested clarification on whether the receipt of a loan entitles an applicant the full amount
14 of the loan requested, and if not, what the criteria for awarding a partial loan would be.

15

16 *Commission Response*

17 **§25.510(e)(6)(K) of the rule as proposed includes interconnection costs among estimated project**
18 **costs, so the commission does not make any change in response to Sierra Club’s comment.**

19

20 **The commission may elect to partially fund a project based on the relative creditworthiness of**
21 **the applicant and feasibility of the project. However, the commission will prioritize TEF loan**
22 **awards to projects that can be fully funded up to the requested loan amount, which cannot**
23 **exceed 60 percent of the project estimated costs. Only after all applications have been**

1 submitted and initial evaluations are complete can the commission know the amount of funds
2 that may be available for partial loan awards.

3

4 *Proposed §25.510(g)(1), (g)(2), and (g)(5)–Multiple Loan Structure Requirements*

5 Proposed §25.510(g)(2) and (g)(5) state that the approved loan will (2) be the senior debt secured by
6 the electric generating facility to be completed; and (5) be structured as senior debt secured by a first
7 lien security interest in the assets and revenues of the project.

8

9 LCRA recommended clarifying that all references of “senior debt” throughout this rule are meant to
10 include the borrower’s parity debt that is secured by a pledge of and lien on revenues. LCRA sug-
11 gested for further protection that the commission add rule language to specify that “senior debt” in-
12 cludes debt secured by a lien on assets or other pledge of or lien on revenues, provided that in the
13 case of debt secured solely by a pledge of or lien on revenues, the borrower has a credit rating no
14 lower than investment grade as determined by Moody’s Investors Service, Inc., Standard & Poor’s
15 Rating Group, or Fitch Ratings (or any successor to such respective credit rating agency).

16

17 CPV suggested modifying §25.510(g)(2) to allow applicants to rely on additional senior funded credit
18 facilities to optimize capital sourcing and all-in cost of capital to fund the full cost of the project.

19

20 CPS Energy recommended changes to allow MOUs to participate in the loan program notwithstand-
21 ing public debt obligations of municipal entities in Chapter 1502 of the Texas Government Code.

22 CPS Energy also recommended that a loan secured by an MOU with existing revenue debt obligations
23 should (i) be considered a priority lien pledged on system net revenues on parity with other

1 outstanding priority lien debt; and (ii) be required to include a covenant not to issue additional debt
2 secured by system net revenues except on parity with or subordinate to such priority lien debt.

3
4 *Commission Response*

5 **PURA §34.0104(b)(3) specifies TEF loans to be the senior secured debt and does not specify any**
6 **other senior level debt. However, CPS Energy and LCRA have identified other statutory re-**
7 **strictions on the ability of an MOU or river authority to grant lien interests in its utility assets.**
8 **Under the proposed rule, these lien restrictions would effectively preclude their participation**
9 **in the in-ERCOT Generation Loan Program. At the same time, PURA § 34.0104(e) specifically**
10 **contemplates the inclusion of river authorities as potential borrowers in the in-ERCOT Gener-**
11 **ation Loan Program. Reading PURA Chapter 34 in its entirety, the commission interprets the**
12 **legislation to allow river authorities and MOUs to obtain a loan, but only when those entities**
13 **secure repayment of the debt with the highest form of security permissible under governing**
14 **law. This interpretation is consistent with the Texas Code Construction Act, which clarifies**
15 **that, in enacting a statute, it is presumed that “a result feasible of execution is intended.” Ac-**
16 **cordingly, the commission modifies (g)(6) and (h)(1)(G) to allow MOUs and river authorities to**
17 **secure repayment of a TEF loan with a pledge of revenues of the applicant’s utility system. The**
18 **commission also adds subsections (g)(7) to reflect that a borrower that is an MOU or river**
19 **authority may meet the loan structure terms through the issuance of a public security in ac-**
20 **cordance with governing Texas law. This form of securitization is only available to river au-**
21 **thorities and MOUs.**

1 **The commission declines to modify the rule as recommended by CPV. All applicants must**
2 **submit information related to their proposed financing structures, which the commission will**
3 **evaluate as part of the project proposal. While applicants may propose project financing struc-**
4 **tures with various forms of subordinated debt, applications proposing to use other senior-level**
5 **debt will not be considered for applicants that are not MOUs or river authorities.**

6
7 **Applicants who wish to use subordinated debt in place of equity are required to assume the cost**
8 **of drafting intercreditor agreements. The commission modifies the rule to add new paragraph**
9 **(h)(8) to reflect the necessity of one or more subordination agreements when a borrower intends**
10 **to use subordinated debt in place of equity.**

11
12 *Proposed §25.510(g)(3)–Loan Repayment of 20 Years*

13 Proposed §25.510(g)(3) states that the approved loan will have a repayment term of 20 years.

14
15 LCRA recommended the repayment term of the loan may be “up to” 20 years to ensure consistency
16 between the language of §25.510(g) and the voluntary prepayment provisions in §25.510(h)(1)(E).
17 LCRA provided redline language in line with the recommendation.

18
19 NRG recommended clarifying the repayment term. NRG commented that under PURA, the loan is
20 to be for a term of 20 years with repayment starting on the third anniversary of COD and expressed
21 confusion around whether this results in a total term of 23 years. NRG stated that this issue could be
22 addressed in the rule, guidance documents, or loan agreements, but recommended removing “repay-
23 ment” to preserve flexibility.

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Commission Response

Under PURA §34.0104(f), loan repayment is coordinated with the project’s respective estimated COD. The loan has an interest-only period during construction and for the first three years after the estimated COD. The entire tenor of the loan does not exceed 20 years, including the interest-only period. The commission modifies the rule to reflect this.

The commission declines to modify the rule as requested by LCRA because including the words “up to” in paragraph (g)(3) would create ambiguity as to whether some loans may be structured for a term shorter than 20 years. All loans will have a 20-year term, and in accordance with the loan agreement details provided in clause (h)(1)(E), all loan agreements will incorporate prepayment conditions.

Proposed §25.510(g)(4)–Loan to be Payable on a Pro Rata Basis

Proposed §25.510(g)(4) states that the approved loan will be payable on a pro rata basis starting on the third anniversary of the estimated COD of the electric generating facility as stated on the application.

LCRA suggested defining “pro rata basis” to mean level debt service.

WattBridge recommended making the repayment terms negotiable between the commission and the applicant. WattBridge also provided redlines in line with its recommendation.

1 *Commission Response*

2 **For consistency with PURA §34.0104(f)(2), the commission modifies the rule by replacing “on**
3 **a pro rata basis” with “ratably.”**

4

5 **The commission modifies the rule to reflect WattBridge’s recommendation to allow for negoti-**
6 **ated repayment terms. The commission agrees that the repayment profile of a given loan should**
7 **appropriately reflect the project’s expected revenue stream. Accordingly, the commission de-**
8 **clines LCRA’s proposal for level debt service and modifies subsection (g)(5) to structure debt**
9 **service on a negotiated basis correlated with the applicant’s expected revenue.**

10

11 *Proposed §25.510(g)(5)—Loan to be Structured as Senior Debt*

12 Proposed §25.510(g)(5) states that the approved loan will be structured as the senior debt secured by
13 a first lien security interest in the assets and revenues of the project.

14

15 LCRA recommended that the pledge of a security interest in assets and revenues of a project should
16 only be required to the extent permitted by law. LCRA noted that Texas law outside of PURA Chap-
17 ter 34 limits some public entities’ ability to grant a lien interest in physical assets. Similarly, CPS
18 Energy stated that Chapter 1502 of the Texas Government Code does not allow a municipal utility to
19 pledge a lien interest in assets of the utility system.

20

21 LCRA also recommended that the commission interpret senior debt to include a borrower’s parity
22 debt that is secured by a pledge of a lien on revenues. Under this approach, “senior debt” would mean

1 debt having no senior rights to the security interest securing the loan, but which may be on parity
2 secured status with the borrower's other senior debt.

3

4 *Commission Response*

5 **PURA §34.0104(b)(3) requires any TEF loan to be the “senior debt secured by the facility,”**
6 **meaning the assets of the project. However, the commission recognizes that an MOU and a river**
7 **authority are limited in their ability to provide a lien on utility assets. Therefore, the commis-**
8 **sion modifies subsection(g)(2) and (g)(6) to allow an MOU or river authority borrower to make**
9 **a revenue pledge to secure its indebtedness.**

10

11 *Proposed §25.510(h)—Loan Terms and Agreements*

12 Proposed §25.510(h) requires the borrower to enter into one or more agreements with the commission
13 that includes the terms of this section.

14

15 LSP suggested allowing customary intercreditor arrangements among the providers of the TEF loan
16 and such other secured indebtedness.

17

18 For MOUs, CPS Energy suggested that the terms and covenants to be embedded in these agreements
19 should be in a debt authorization ordinance or resolution consistent with Chapter 1502 of the Texas
20 Government Code, instead of a separate credit agreement. CPS Energy commented that it would be
21 difficult to have a standardized loan agreement because MOUs have different statutory financing
22 obligations than privately-owned entities. Further, CPS Energy recommended that the commission
23 have a separate standard form for MOUs or carve-out provisions in a standard form agreement.

1

2 Calpine suggested the commission clarify whether the agreements listed will be developed and nego-
3 tiated on an applicant-by-applicant basis or if standard form agreements will be developed.

4

5 LCRA noted that Texas Special District Local Laws Code Chapter 8503 prohibits LCRA from en-
6 cumbering its property with a lien interest. Accordingly, LCRA suggested a change to reflect that a
7 secured interest in TEF-funded assets should only be required “to the extent permitted by law.”

8

9 LSP argued that a standard credit document would not be practical because credit agreements are
10 typically tailored to specific projects. LSP acknowledged that some basic loan terms and conditions
11 could be applicable to all borrowers. LSP recommended developing a term sheet that lists the basic
12 loan tenets such as requirements for term, rate, payment terms, notice, cure, and default provisions,
13 and circulating it for public comment.

14

15 NRG supported working towards a standardized form of a loan agreement for borrowers but proposed
16 that certain elements of the credit agreement will need to be tailored for each individual project via
17 exhibits and schedules. NRG recommended that the commission seek stakeholder feedback on the
18 initial draft of the loan forms in a workshop session.

19

20 Vistra supported limited contested case proceedings that would allow for a standardized loan agree-
21 ment while allowing parties to seek modification for good cause.

22

23 ***Commission Response***

1 The commission notes that the first sentence of subsection (h) only reflects that the lending
2 relationship between the commission and a borrower must be memorialized in one or more loan
3 agreements. This means that an approved applicant must enter into a standardized, commer-
4 cially typical loan agreement that includes terms described in the various paragraphs of sub-
5 section (h). In response to Calpine, LSP, and NRG, the commission acknowledges that each
6 TEF-funded project will have specific attributes that call for individualized loan documentation
7 for each borrower. Project-specific attributes will therefore be addressed in each loan agree-
8 ment on a borrower-by-borrower basis. However, all loan agreements must incorporate the
9 requirements described in the entirety of subsection (h).

10
11 The commission agrees with LSP that the loan agreement should allow various creditors to
12 confirm their lien status with respect to facility assets. The commission adds paragraph (h)(8)
13 to require the subordination of any other creditors with respect to the commission. Borrowers
14 that require this arrangement will be responsible for the preparation and cost of any such sub-
15 ordination agreements.

16
17 The commission acknowledges the comments of CPS Energy and LCRA identifying laws spe-
18 cific to public power authorities that restrict the ability to provide a security interest in utility
19 assets. The commission modifies subparagraph (h)(1)(F) to carve out an MOU or river author-
20 ity from the requirement to grant a lien interest in utility assets in favor of the commission.

1 *Proposed §25.510(h)(1)(A)–Performance Covenant*

2 Proposed §25.510(h)(1)(A) requires an EAF performance of 50 for the electric generating facility
3 financed by the loan during its term. The EAF indicates the fraction of an operating period where a
4 generating unit is available to produce electricity, free of outages or equipment deratings.

5

6 ERCOT recommended revising the rule to state that ERCOT’s availability data be used rather than
7 using North American Electric Reliability Corporation (NERC) Generating Availability Data System
8 (GADS). ERCOT stated that NERC GADS is confidential. ERCOT suggested it could provide a
9 report on an annual basis (or other specified period) documenting the EAF for each unit that is the
10 subject of a loan agreement and recommended that such a reporting obligation be specified in the
11 rule. ERCOT stated if the telemetered status for the entirety of a given hour during the period of the
12 loan is anything other than “OUT,” “EMR,” or “EMRSWGR,” the unit would be considered available
13 unless the telemetered HSL for the unit is less than the unit’s seasonal net maximum sustainable rating
14 by some defined margin established by ERCOT. (ERCOT Nodal Protocols §3.9.1). ERCOT also
15 recommended that, if the commission expects ERCOT to calculate the EAF under this rule, the rule
16 be revised to allow ERCOT to establish such a margin or the EAF calculation in §25.510(h)(1)(A) be
17 revised to provide for a reduction in the EAF proportional to the magnitude of the derate, rather than
18 considering any derate to mean the unit is entirely unavailable.

19

20 Advanced Power recommended adding clarity related to the measurement of EAF performance goals
21 but did not provide an explanation of what required further clarification.

22

1 Calpine urged clarification on EAF performance and definition. Calpine recommended defining EAF
2 as “the fraction of a given operating period in which a generating unit is available to produce elec-
3 tricity without any outages or equipment deratings.”

4

5 WattBridge recommended that the EAF performance be evaluated annually on a site-wide basis, and,
6 if the electric generating facility fails to meet the EAF, the facility should have a one-year cure period
7 to meet the EAF performance requirement. WattBridge also recommended that the GADS calculation
8 for EUOF be used, instead of EAF, to remove planned outages because “it is industry and prudent
9 practice to take planned outages.”

10

11 Sierra Club suggested 70 as an appropriate performance standard, while TIEC suggested increasing
12 required EAF to 80.

13

14 TPPA proposed calculating overall EAF at regular intervals rather than applying EAF performance
15 covenant to each operating hour during the term of the loan because requiring performance in each
16 operating hour is too stringent.

17

18 NRG, WattBridge, TCPA, and LSP all recommended using NERC GADS EUOF to calculate avail-
19 ability. NRG further recommended excluding Outside Management Control events when calculating
20 performance, and recommended calculating performance monthly as an annual average over a rolling
21 24-month period, instead of for each hour of the loan term. NRG believed the proposed performance
22 covenant based on EAF is too strict and imposes unacceptable risk of default.

23

1 LSP and TCPA recommended calculating EAF on a 12-month rolling average as a single hour below
2 50 could trigger a breach. TCPA further suggested a proscriptive performance calculation method-
3 ology that does not allow the facility to allocate less equivalent outage hours to the portion of the
4 facility serving ERCOT load.

5

6 Golden Spread suggested there is conflicting EAF information between §25.510(h)(1)(H) and
7 (h)(1)(A) and requested clarification on whether EAF is measured annually or if EAF of 50 is meas-
8 ured for all hours during the term of the loan. Golden Spread recommended measuring EAF over the
9 life of the loan instead of every year because consequences for default are severe and poor perfor-
10 mance in a single year for an otherwise well-performing unit could result in loan default.

11

12 Vistra recommended the commission use a different performance metric or provide clarity on EAF
13 performance standard. Vistra suggested using NERC EUOF definitions. Alternatively, Vistra sug-
14 gested that the commission could adopt a phased-in approach to compliance where, in the first three
15 years of operation, facilities are held to a lower performance standard that scales up over time.

16

17 HEN suggested that identifying the “given operating period” for EAF calculation as the time period
18 over which the availability factor is calculated is essential to determine whether an EAF of 50 is a
19 reasonable performance requirement. HEN recommended that the “given operating period” should
20 be a calendar year.

21

1 *Commission Response*

2 **The commission modifies the rule to use two performance standard metrics based on ERCOT**
3 **real-time telemetered and COP data: the PAF and the Planned Outage Factor (POF). The EAF**
4 **metric used in the proposed rule relies on confidential NERC GADS data that is not readily**
5 **available to ERCOT or the commission, so the commission removes that metric from the rule.**

6
7 **The PAF will be calculated monthly to determine availability over the trailing 12 months, meas-**
8 **ured as the average of the ratio of real-time HSL to the available capacity expressed as a per-**
9 **centage, to avoid single-hour risk of default. Available capacity will be based on the adjusted**
10 **seasonal net max sustainable rating, as registered with ERCOT. The available capacity for a**
11 **GR associated with an industrial load or a PUN will use the net capacity that is allocated to**
12 **primarily serve the ERCOT market. The PAF calculation will exclude intervals of planned**
13 **maintenance that result in an outage of the entire resource, and projects will be required to**
14 **maintain a PAF of 90 percent to reflect this consideration.**

15
16 **The second metric, the POF, is defined to evaluate the amount of time that a GR spends in**
17 **planned outages during any evaluation period. POF will be calculated monthly to determine**
18 **the percentage of time that a GR spent in planned outages during the trailing 12 months. A GR**
19 **that is part of a facility financed by a TEF loan is required to maintain a POF no greater than**
20 **10 percent.**

21
22 **The PAF and POF will be incorporated into the performance covenant of the credit agreement,**
23 **and so the commission modifies (b)(3), (b)(4), and (h)(1)(A) accordingly.**