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PROJECT NO. 57236

PROJECT TO DEVELOP THE TEXAS BACKUP POWER PACKAGE PROGRAM	§ § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

VISTRA CORP.'S POST-WORKSHOP COMMENTS

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

Vistra Corp. (Vistra) files these written comments in supplement to its spoken comments at the March 20, 2025 workshop hosted by Public Utility Commission of Texas (Commission) Staff regarding the Texas Backup Power Package (TBPP) program.[1] These comments are timely filed.[2] An executive summary is included at the end of the comments.

I. COMMENTS

Vistra has limited its written responses at this time to Staff's request for comments to Questions 1A, 1C, and 3B, with the latter two taken up together. As with Vistra's February 14, 2025 comments and spoken comments at the March 20, 2025 workshop (Workshop), these comments continue to focus on important policy tensions for the Commission to consider as it prepares for a rulemaking to implement the TBPP program.

1.A. Cost Offsets – How can the specifications be refined to prioritize cost savings, effectiveness, and affordability for TBPPs without compromising backup power and resilience goals?

a. To holistically achieve legislative intent, the Commission must coordinate policies to ensure that TBPP operation does not undermine broader state reliability objectives.

As thoroughly covered in Vistra's February 14, 2025 comments, the topic of "Cost Offsets" is inherently in tension with other higher-priority state reliability objectives—a tension that the Commission must balance in order to implement all of the policies established in SB 2627 and throughout the Public Utility Regulatory Act (PURA) more broadly. In the ERCOT energy-only market design, that means it is critical that TBPP utilization not interfere with price formation.

[1] Project No. 57236, March 20, 2025, Texas Backup Power Package Program Public Workshop Agenda (Mar. 6, 2025).

[2] *Id.* Staff requested written comments by April 3, 2025.

Allowing TBPP resource utilization to interfere with price formation will likely undermine the goal to prioritize cost savings. To maintain commercial viability, peaking grid resources rely on the fundamental market principle that prices rise as demand nears the supply limit. Allowing TBPP utilization to suppress prices will eventually lead to the premature retirement of peaking units. Over time, the loss of these peaking resources will lead to higher, more volatile prices due to increased instances of scarcity. That would, in turn, result in greater reliance on TBPPs and other out-of-market actions, rather than supporting the investment in generation resources on the bulk power system. To avoid risking this spiral of disinvestment (that would also be much more complex for grid operators to manage), the Commission must be very thoughtful about coordinating policies that impact energy market price formation and investment signaling upon which the energy-only market depends for success.

b. The statute's use standards bar TBPPs from participating in the ERCOT market, so the Commission must also bar that activity and must also ensure its rules cannot financially support commercial energy systems via TBPP subsidies.

PURA Chapter 34, Subchapter B (which establishes the TBPPs) offers four very clear admonitions against TBPP participation in the market:

- PURA § 34.0202 states that the purpose of funding TBPPs is for, among other things, "*use* of [TBPPs] to *ensure the reliability or adequacy of an electric power grid* in this state *for facilities on which communities rely* for health, safety, and well-being."
- PURA § 34.0204(6) specifically states that a grant or loan may only be provided for a TBPP that "is not used by the owner or host facility for the sale of energy or ancillary services."
- PURA § 34.0205(e)(1) specifically states that the Commission may not provide a TBPP loan or grant for "a commercial energy system."
- PURA § 34.0205(e)(2) also states that the Commission may not provide a TBPP loan or grant for a TBPP that does not "follow the design *and use standards* of a [TBPP]." *(emphasis added)*

The last citation is notable because it indirectly requires the Commission to identify TBPP "use standards"—which necessarily incorporates the middle two citations (i.e., a TBPP cannot be engaged in the sale of energy or ancillary services or be a "commercial energy system"). Thus,

there cannot lawfully be any cost offsets originating in ERCOT markets for a TBPP—including Emergency Response Service (ERS) and TBPP-enhanced "demand response," since participation in those programs would render the TBPP system "commercial" and potentially also result in a sale of energy, which is also prohibited. Similarly, aggregation of TBPPs to engage in ERCOT markets would render the systems commercial and thus violate the TBPP use standards. Consequently, TBPP aggregations could not lawfully be used to sell ancillary services through an aggregation such as the Aggregated Distributed Energy Resource, or ADER, pilot project.[3]

In addition to these policy considerations, there are also very practical reasons that TBPPs are not allowed to participate in commercial activities: *The backup value of the TBPP diminishes with commercial utilization.*[4] Consider that TBPPs by law must rely, at least in part, on battery storage and be capable of operating for at least 48 continuous hours without refueling or connecting to a separate power source. If TBPPs were permitted to engage in commercial activity, it is reasonable to expect that the TBPP would experience depletion of its battery state of charge when discharging to enhance demand response or have its AS responsibility deployed. That TBPP would consequently be at risk of not having sufficient state of charge to provide backup service to the owner or host. Any "commercial" draw-down of state of charge would be most likely when grid conditions are tight. But TBPPs are to exist to support critical needs during those tight conditions. Thus, in light of the critical nature of the facilities that TBPPs are intended to support, it is inappropriate to gamble with their ability to achieve their primary objective by contravening the statute and allowing them to engage in commercial activity.

The first citation demonstrates consistent intent on both of these fronts regarding the purpose of the TBPP program. That is because the commercial "use of [TBPPs]" actually undermines the ERCOT energy-only market design's ability to "ensure the reliability or adequacy" of the generation facilities on the ERCOT grid, upon which *many* Texas "communities rely for health, safety, and well-being"—not only the critical host facility. And, more narrowly, the commercial use of the TBPP could also undermine the ability of the TBPP to provide its intended backup power to its critical host facility (also failing to support the reliable provision of electricity to such facilities "on which communities rely for health, safety, and well-being").

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[3] Any market sale of energy or capacity would render a TBPP a commercial energy system.

[4] Vistra does not view the prohibition against commercial use of the TBPPs to prevent limited periodic reliability testing of TBPPs that may result in incidental generation.

c. The Commission should direct that any non-backup use of TBPPs must be coordinated by ERCOT and accounted for in the Reliability Deployment Price Adder (RDPA) to mitigate market distortions created by any use of subsidized out-of-market capacity.

One question raised at the Workshop was whether or not TBPPs should be able to switch to island mode in advance of the grid going into rotating outages (e.g., at an Energy Emergency Alert (EEA) Level 2, rather than waiting for firm load shed to begin at EEA Level 3). There is a fair distinction between ERCOT coordinating the utilization of TBPPs to help avoid EEA Level 3 (and potential rotating outages affecting the critical host facilities) and the commercial use cases noted in the section above. ERCOT-coordinated deployments of TBPPs during an EEA Level 2 could be consistent with the "use of Texas backup power packages to ensure the reliability or adequacy of an electric power grid in this state for facilities on which communities rely for health, safety, and well-being."[5] However, even in that case, the Commission must still balance the deployment so as to only deploy TBPPs when doing so is a reasonable proxy for potential firm load shed in an EEA Level 3, as well as take care to coordinate its policies to not undermine the price formation signals upon which the energy-only market relies.

Fortunately, there are well-established processes in the ERCOT market to help reduce (but not eliminate) the impact of out-of-market actions taken for reliability purposes. The ERCOT Protocols include a Real-Time On-Line Reliability Deployment Price Adder (RDPA) that attempts to ensure that real-time market prices continue to reflect scarcity when ERCOT is experiencing extreme scarcity and taking extraordinary actions outside of normal market processes to support reliable operation of the grid.[6] Examples include commitment of Reliability Must-Run resources, deployment of Emergency Response Service, Reliability Unit Commitments, and ERCOT-directed firm load shed under EEA Level 3. This maintenance of market-reflective pricing is critical in an energy-only market. Strong price signals during times of scarcity incentivize flexible loads to reduce consumption, prompt available generators to maximize output, and provide a financial signal that helps to retain existing resources and attract new investment.

The utilization of TBPPs to address reliability issues fits very neatly into this RDPA framework. Vistra is not advocating that the Commission *must* utilize TBPPs for reliability purposes, because there is risk of depleting state of charge and reducing backup capabilities during situations like a long-duration winter weather event that could see multiple EEAs. Vistra is

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[5] PURA § 34.0202.

[6] *See* ERCOT Nodal Protocol § 6.5.7.3.1.

advocating that *if* the Commission decides to support TBPP utilization for reliability purposes *then* it is essential that the Commission also direct ERCOT to coordinate that activity and include it as an RDPA-triggering out-of-market action.

1.C. Cost Offsets How can contracts for alternative ownership models and financing mechanisms be structured to comply with statutory requirements? If these models and mechanisms are considered, what metrics could effectively measure value, performance, and compliance for the TBPP program?
3.B. Supply Chain & Deployment How might other business models enable TBPP deployment by reducing the potential limitations or constraints that a critical facility may face when installing or maintaining a TBPP? What would the implications be if a critical facility exits the program?

d. Although the statute indirectly acknowledges alternative business models, the Commission has no statutory directive to design TBPPs to favor those models.

These questions reflect an implicit assumption that the Commission should design the TBPP program to accommodate alternative business models. While there is interest from some parties in offering TBPPs through alternative business models, the Commission is under no mandate to favor them. The statute's use of the terms "host facility"[7] and "vendors"[8] appears to contemplate that not all TBPPs would be customer-owned and operated. Accommodation of alternative business models might be appropriate for TBPP delivery but only if such business models comply with the statutory framework.

The overwhelming majority of comments from potential vendors, however, appear to have the intention of violating the TBPP use standards, as they explicitly seek the Commission's authorization to allow for frequent utilization of TBPPs for "energy-as-a-service," "out-of-market services," or otherwise allow use of TBPPs outside of grid emergencies. This is a use of TBPPs that the Commission cannot grant because, regardless of ownership or business model, the use standards for TBPPs are clear—TBPPs may not be used for sale of energy or ancillary services, should not undermine the reliability or adequacy of the ERCOT market, and the Commission may not provide loan or grant funding for a TBPP that is "a commercial energy system."[9]

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[7] *See* PURA § 34.0204(2), (4), and (6).

[8] *See* PURA § 34.0205(d).

[9] The further that an alternative business model strays from the TBPP use standards, the more the vendor-owner may resemble a "for-profit entity that does not directly serve public safety and human health" – and therefore also be ineligible for a grant or loan under PURA § 34.0205(c)(1).

It might be reasonable, and would be permissible, for the Commission to craft its rules regarding TBPP to allow for TBPPs to be owned, operated, maintained, financed, etc. by entities that are not the critical host facility customer itself. But the Commission should avoid crafting rules that could disproportionately favor alternative business models, particularly when advocates for those models are promoting facial violation of the statutory TBPP use standards—i.e., unlawful commercial use of the TBPPs.

e. Alternative business models are subject to the same performance and compliance requirements, and no TBPP, regardless of business model, may sell energy or ancillary services.

It is notable that one of the provisions that impliedly contemplates alternative business models also explicitly forbids TBPP sales of energy or ancillary services. PURA § 34.0204(6) prohibits use of TBPPs "by the owner *or* host facility" to sell energy or ancillary services. The emphasis on the term "or" acknowledges that whether the TBPP is customer-owned or hosted but owned through an alternative business model, the sale of energy or the sale of ancillary services is not permitted (for good reasons, as discussed above). Therefore, at least one compliance metric that should apply equally to all business models of TBPP ownership and operation is attestation and periodic verification that a TBPP is not selling energy or ancillary services. One option for coordinating that compliance effort would be to establish a streamlined TBPP registration and periodic renewal framework (which could also be leveraged to establish the approved vendor list required by PURA § 34.0205(d)).

Similarly, there are not any separate performance requirements for TBPPs operated under an alternative business model. The TBPP must be engineered to minimize operation costs, be capable of immediate islanding and stand-alone operation for at least 48 hours, serve no more than 2.5 MW of load at a host facility, be composed of either electric school bus battery energy storage or a combination of natural gas or propane with solar and storage, and not be used to sell energy or ancillary services. To the extent that the Commission might decide to allow ERCOT to utilize TBPPs for reliability purposes, that would entail further specific performance requirements. But all performance requirements must apply equally to direct ownership of TBPPs by critical host facilities and to alternative business models.

f. The statute does not bar incentive stacking for TBPP projects (e.g., qualifying for a grant and a loan or multiple grants), and this approach would be preferable to allowing market-distortive non-backup use of TBPPs if the Commission seeks to maximize economic benefits provided to TBPPs.

At the Workshop, some commenters expressed an interest in the stacking of multiple $500/kW grants and other supports to help defray TBPP costs. In the TBPP context, this might be a reasonable consideration. As discussed above, many of the alternative business model proposals seem rooted in making sales of energy or ancillary services and thus facially violating the TBPP use standards, which would flout the letter of the law and the spirit of promoting *backup power sources* for critical facilities.

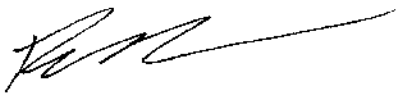
Vistra recognizes the concerns raised by other stakeholders that TBPP costs could exceed the statutory $500/kW grant limit and that some critical facilities might not have revenues or assets to cover the remaining TBPP costs. If critical host facilities are not willing or able to fund TBPP costs over and above a one-time $500/kW grant, then successful implementation of the TBPP program might prompt the Commission to consider multiple grants to a single TBPP project under PURA § 34.0205(b) or to combine a TBPP grant with a TBPP loan for procurement and operating costs under PURA § 34.0205(c). If the Commission determines that a single grant or loan might not appropriately incentivize TBPPs, then the stacking of multiple incentives for TBPPs would be a better option to achieve the statute's objectives without violating other statutory prohibitions or energy-only market policy principles.

II. CONCLUSION

Vistra appreciates the Commission's consideration of these comments and looks forward to working with the Commission, Staff, ERCOT, and other stakeholders in this project.

Dated: April 3, 2025

Respectfully submitted,



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VISTRA CORP.'S POST-WORKSHOP COMMENTS – EXECUTIVE SUMMARY

1.A. Cost Offsets How can the specifications be refined to prioritize cost savings, effectiveness, and affordability for TBPPs without compromising backup power and resilience goals?

- To holistically achieve legislative intent, the Commission must coordinate policies to ensure that TBPP operation does not undermine broader state reliability objectives.

- The statute's use standards bar TBPPs from participating in ERCOT wholesale market and the Commission cannot financially support commercial energy systems via TBPP subsidies.

- The Commission should direct that any non-backup use of TBPPs must be coordinated by ERCOT and accounted for in the Reliability Deployment Price Adder (RDPA) to mitigate the market distortions created by any use of subsidized out-of-market capacity.

1.C. Cost Offsets How can contracts for alternative ownership models and financing mechanisms be structured to comply with statutory requirements? If these models and mechanisms are considered, what metrics could effectively measure value, performance, and compliance for the TBPP program?
3.B. Supply Chain & Deployment How might other business models enable TBPP deployment by reducing the potential limitations or constraints that a critical facility may face when installing or maintaining a TBPP? What would the implications be if a critical facility exits the program?

- Although the statute impliedly acknowledges alternative business models, the Commission has no statutory directive to design TBPP to favor those alternative business models.

- Alternative business models are subject to the same performance and compliance requirements, and no TBPP, regardless of business model, may sell energy or ancillary services.

- The statute does not bar incentive stacking for TBPP projects (e.g., qualifying for a grant and a loan or multiple grants), and this approach would be preferable to allowing market-distortive non-backup use of TBPPs if the Commission seeks to maximize economic incentives provided to TBPPs.