



## **Filing Receipt**

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**PROJECT NO. 57236**

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

**JOINT COMMENTS OF  
TEXAS ELECTRIC COOPERATIVES, INC. AND  
TEXAS PUBLIC POWER ASSOCIATION**

Texas Electric Cooperatives, Inc. (TEC) and the Texas Public Power Association (TPPA) (Joint Commenters) respectfully submit these comments following the Backup Power Package Program Workshop, hosted by Commission Staff on November 13, 2024.<sup>1</sup> TEC is the statewide association of electric cooperatives operating in Texas, representing its members except as their interests may be separately represented.<sup>2</sup> TPPA is the statewide association representing the interests of 72 municipally owned utilities in Texas. These comments are timely filed.

**I. Project Ownership**

Joint Commenters understand that there are multiple ownership models under consideration.<sup>3</sup> However, the alterative ownership models proposed by other stakeholders may be unworkable in territories served by Non-Opt-In Entities (NOIE) such as electric cooperatives and municipally owned utilities (MOU).<sup>4</sup> Electric Cooperatives and MOUs operate with an exclusive right and obligation to serve within statutorily defined service territories.<sup>5</sup> A third party operating and selling or otherwise providing electric service to a co-op member or consumer in municipal territory, even if it is only to one consumer, is a violation of NOIE service territory rights.<sup>6</sup> The “resiliency as a service” model involves the provision of electricity from the backup power

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<sup>1</sup> November 13, 2024 Texas Backup Power Package Program (TBPP) Virtual Workshop AGENDA. Attachments include TBPP Advisory Committee letter dated 3.15.24 and TBPP Initial Report (Oct. 31, 2024) (Workshop Agenda).

<sup>2</sup> TEC’s 76 members include distribution cooperatives that provide retail electric utility service to approximately 5,000,000 consumers in statutorily authorized service areas that encompass more than half of the total area of the state. TEC’s G&T members generally acquire generation resources and power supply for their member distribution cooperatives and deliver electricity to them at wholesale.

<sup>3</sup> Workshop Agenda at 2.

<sup>4</sup> April 10, 2024 comments from Microgrid Resource Coalition addressing questions also raised by the Commission in November 13, 2024 Texas Backup Power Package Program Virtual Workshop Agenda at 5 (Nov. 11, 2024) (Microgrid Comments).

<sup>5</sup> Public Utility Regulatory Act (PURA) §37.051 (b).

<sup>6</sup> *Id.* (“...a retail electric utility may not furnish or make available retail electric utility service to an area in which retail electric utility service is being lawfully furnished by another retail electric utility ...”).

generation owned by a third party to an end user, akin to a retail sale, which would likely result in the third party being considered a retail electric utility and therefore prohibited from operating in NOIE service territories.<sup>7</sup> In order to comply with the service territory rights of the NOIE, backup power system ownership will need to be limited within NOIE territories to either the benefiting backup power facility itself or the NOIE providing electric service.

The facility benefiting from the backup power system may consume the power produced to maintain service during an outage without any implication on the rights of the NOIE.<sup>8</sup> Alternatively, if the facility does not want to operate or maintain the backup power system, the NOIE may own and operate the backup power system.

## **II. Use of the Backup Power Program**

The resilience as a service model, in addition to the ownership issues addressed, also presents concerns regarding the use and purpose of the backup power program. It was posited in the Backup Power Advisory Committee Report that the backup power systems could be used as a form of load control and entail a certain level of compensation.<sup>9</sup> Joint Commenters are concerned that this usage of the backup power program, compensation for sales of energy and load control, could amount to the provision of energy or an ancillary service that is a direct violation of the backup power package statute, which forbids the use of backup power systems to sell energy or ancillary services.<sup>10</sup> Further, loans or grants may not be provided to a “commercial energy system”.<sup>11</sup> Providing any form of market compensation to the owners of these systems would violate this condition.

In addition to the legal restrictions, the use of the backup power systems as load control also interferes with the efficient operation of the ERCOT market in multiple ways. Generators rely on market signals to know when to increase production during times of scarcity. Scarcity pricing is also the fundamental driver of long-term investment in new generation. Removing loads with backup power distorts the signals being sent to the market by artificially reducing the overall load,

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<sup>7</sup> PURA §37.001 (3).

<sup>8</sup> *Id.*

<sup>9</sup> *Backup Power Package Advisory Committee Information and Reports*, Project No. 56176, Texas Backup Power Package Advisory Committee October 1, 2024 Report at 7 (Oct. 2, 2024) (Backup Power Committee Report).

<sup>10</sup> PURA § 34.0204 (6) (“TEXAS BACKUP POWER PACKAGES. The commission may use money in the Texas energy fund without further appropriation to provide a grant or loan for the operation of a Texas backup power package that: (6) is not used by the owner or host facility for the sale of energy or ancillary services.”)

<sup>11</sup> PURA §34.0205 (c)(1).

resulting in generators not receiving the appropriate signals to increase production or build new infrastructure for the future. Allowing the backup power systems to be used for load reduction or any other service unrelated to supporting continuous electric service during an outage further harms the incentivization of new generation to locate in the ERCOT market, because the backup power systems are subsidized generation competing within the market with non-subsidized generation. This disparity gives the subsidized backup power generation an economic advantage over non-subsidized generation and acts as a barrier to new non-subsidized generation seeking to locate in the ERCOT market.

Finally, the original and primary purpose of the backup power program is to provide backup power for facilities essential to community health, safety and well-being.<sup>12</sup> If backup power systems are permitted to sell energy, engage in load control, or other market related activities, this diminishes the ability of the backup power system to be available when truly needed for backup power purposes in the event of load shed. If the system is reliant on on-site fuel or is used in a manner that has deteriorated the system, it may no longer be able to serve its primary function of providing backup power in the event of load shed.

### **III. Conclusion**


TEC, TPPA and their members do not oppose the Backup Power Package. Joint Commenter members serve areas that may benefit from the use of backup power systems, but backup power systems must be deployed in a manner consistent with their intended purpose and respective of the rights of other market participants. Joint Commenters appreciate the opportunity to provide comment in response to the Backup Power Package Workshop and look forward to working with Staff and the other stakeholders in this project.

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<sup>12</sup> PURA §34.0202.

Dated: November 26, 2024

Respectfully submitted,



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