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PROJECT NO. 58198

RULEMAKING TO IMPLEMENT	§	PUBLIC UTILITY COMMISSION
FIRMING RELIABILITY	§	
REQUIREMENTS FOR ELECTRIC	§	
GENERATING FACILITIES IN THE	§	
ERCOT REGION UNDER	§	
PURA §39.1592	§	OF TEXAS

**TEXAS ENERGY BUYERS ALLIANCE COMMENTS ON THE PROPOSED FIRMING
RULE**

The Texas Energy Buyers Alliance (TEBA) represents the collective voice of more than 200 companies, representing some of the state's largest employers and energy customers. In total, TEBA members represent more than \$31 trillion in market capitalization and hundreds of thousands of employees in Texas. Our organization is focused on helping to shape Texas' electricity market redesign in ways that propel Texas' economy forward, lower power bills for all energy customers, create jobs, spur innovation, strengthen the ERCOT grid, and extend Texas' energy leadership through the energy transition and for generations to come.

TEBA remains concerned about the potential negative impacts of firming requirements, in general, and we have significant concerns with this Proposal for Publication (PFP), in particular. As drafted, in summary, we are concerned that batteries will not be given the unique status to provide firming that they are granted in law, that solar will have to firm at night, that existing generators could lose the exemption from the program that the law grants them because they upgrade their facility over time, and that load resources are not included in the firming program.

Response to questions raised in the PFP:

1. What level of Physical Responsive Capability (PRC) should be used to define a low operation reserve hour?

3,000 MW, as proposed by the PFP, is the most appropriate level for PRC. If it is too low, firming will never be triggered, but if it is much higher, it could interfere with the normal operations and commitment decisions in the ERCOT market. 3,000 MW falls squarely in the goldilocks zone for the appropriate reserve level for this service.

2. Should the low operation reserve hour be tied to the deployment of or a shortage in aggregate real-time awards relative to the Ancillary Service Plan for ERCOT Contingency Reserve Service?

No. Offline ECRS can be deployed manually by ERCOT, and would also lead to more hours when firming is required. Furthermore, ECRS is a component of operation reserves, but operation reserves include other kinds of capacity. Using ECRS would therefore be far more restrictive than HB 1500.

Comments on specific rule sections from the PFP:

TEBA has suggested changes to the following Applicability section:

*(a) **Applicability.** This section applies to an electric generating facility, other than a battery energy storage resource, settlement only generator, ~~or~~ self generator, or shares a point of interconnection with a load in the ERCOT region:*

(1) for which a standard generation interconnection agreement is signed on or after January 1, 2027, and that has been in operation for at least one year; ~~or~~

~~(2) completes upgrades resulting in an increase of the nameplate capacity by 50 percent or more and requires a new or amended standard generation interconnection agreement after January 1, 2027.~~

TEBA recommends that “or shares a point of interconnection with a load” be added here to allow for a broad interpretation of the “self-generator” exemption in the statute.

Furthermore, TEBA is strongly opposed to the language that would remove the exemption from firming for existing generators, even if they make changes over time to their facilities. There was an extensive debate in the recent legislative session over this topic, and the legislature did not extend firming requirements to existing generators. The applicability of firming to only new generators was carefully negotiated when HB 1500 passed, and there is no justification to expand the program to apply to existing generators that do not meet the statutory test – an SGIA on or after January 1 2027. Doing so would upend the careful compromise reached to provide business and regulatory certainty.

As noted above, TEBA supports the definition of a low operation reserve hour proposed in the PFP. 3,000 MW of physical responsive capability (“PRC”) is the appropriate quantity of the appropriate metric. Proposals that do not include PRC as the metric risk deviating from the statutory requirement to use operations reserves – PRC is the sole metric for that purpose.

(b) Definitions. The following words and terms, when used in this section, have the following meanings unless the context indicates otherwise.

(...)

(7) Seasonal average generation capability -- For each season, the average, determined for each clock hour, of the ratio of real-time telemetered high sustained limit (HSL) to the seasonal rated capacity of an electric generating facility across all intervals, in that clock hour, during the prior three years multiplied by the seasonal rated capacity of the electric generating facility at the beginning of the relevant season. For an electric generating facility that has been in operation for less than three years, ERCOT will use the operational data that is available for each season.

TEBA is concerned that creating a seasonal average that averages across hours will lead to a requirement to firm solar generation at night. This would be a nonsensical and inappropriate outcome. It is well-understood that the sun sets each day in a consistent fashion, and if it didn't, balancing supply and demand on the Texas grid would be the

least of our concerns. A simple way to address this is to take the Texas Solar + Storage Association's "1x24" proposal to make this an average within a clock hour for that season. A seasonal hourly average elegantly accounts for expected production and how it changes throughout the day. It also reflects the "expected resource capability" called for in the statute.

Furthermore, the use of HSL in this formula may lead to significantly unintended outcomes. As drafted, it appears that batteries and thermal generators will be expected to exceed something based on their maximum capacity. If that is the case, this entire definition will need to be reconsidered.

*(d) **Reliability requirement.** Each season, an electric generating facility, must operate or be available to operate when called on for dispatch at or above the seasonal average generation capability during a low operation reserve hour that occurs within a high-risk hour.*

*(1) **Firming.** The owner or operator of an electric generating facility may meet the requirements under this subsection by supplementing its portfolio or contracting with:*

(A) another electric generating facility that is either on-site or off-site;

(B) an on-site or off-site battery energy storage resource for the full capacity of the facility;

(C) A load resource; or

(D) Any other entity allowed by the ERCOT Protocols.

The “Staff Clarifying Memo with examples,” filed on August 18th gave TEBA causes for concern. First, the memo substantially changes the interpretation of the text. As far as we can tell, there is no language in the PFP that matches the staff’s approach to batteries. There is no basis in law for creating a structure where a battery can “over perform” or “under perform” – batteries are explicitly exempted from firming requirements. A primary basis for a firming proposal is encourage the use of batteries to meet the grid’s needs and address uncertainties from wind and solar production.

Batteries are inherently capable of charging or discharging in response to too much or too little generation from other sources. When a battery is discharging and providing firm power to the grid, staff’s approach is to include that discharge in its ongoing seasonal average, making less of the battery’s production potential available to be paid for firming the more it consistently firms. In other words, by actually firming, a battery will not be paid for firming under the PFP, because its higher average production result in a changed seasonal average. This can be simply solved by allowing a battery to use its full capacity to offer firming to other resources. TEBA believes this was the clear intention of exempting storage from the program – to make it available to provide firming.

Beyond TEBA’s concerns with the treatment of energy storage resources, ERCOT we are also concerned about the limitations on which kinds of resources can provide firming to other facilities. In TEBA’s view, it is important to note that HB 1500 allows “resources” – not just generators when it states “The owner or operator must be allowed

to meet the performance requirements described by this subsection by supplementing or contracting with on-site or off-site resources.” Notably, resources are a broader category than generators in ERCOT, and the distinction particularly includes load resources. It is TEBA’s view that load resources must be allowed to provide firming to an owner or operator, not just generators. Furthermore, TEBA believes that ADERs or other categories of resources are similarly allowed to participate, but rather than comprehensively list them in rule, allow the ERCOT Protocols to deal with specifics. For these reasons, TEBA recommends that load resources specifically be included, and that any other entity listed in the Protocols in the future also be included.

~~*(g) Protocols. ERCOT must develop protocols in consultation with commission staff to implement this rule by December 1, 2026.*~~

With respect to both ERCOT and the commission staff, TEBA feels that it is unnecessary to specifically require ERCOT to adopt Protocols to implement the rule. We suggest it is best to assume that ERCOT must always be capable of settling the market and be in compliance with the commission rules, and does not require specific direction. We note for example that §25.501 does not require that Protocols be developed in consultation with commission staff but does give broadly applicable principles that must be the basis for the protocols.

Thank you,

*/s/ Bryn_Baker*_____

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Texas Energy Buyers Alliance Executive Summary: Project 58198, Firming

TEBA's recommendations for the Proposal for Publication are summarized as follows:

- TEBA supports the use of physical responsive capability as operations reserves in the firming program, and supports setting the level at 3,000 MW.
- TEBA opposes using ECRS for operations reserves; it is not broad enough to cover all operation reserves and its use not as clearly defined. It could also lead to too many firming hours.
- TEBA strongly opposes the proposal to have a generator lose its exemption from firming when a generator increases or replaces capacity. This would create a disincentive for investment in new capacity.
- TEBA supports the use of a "1x24" approach to seasonal average generation capability. This helps to have more accurate settlement and avoids the problem of requiring solar to firm at night. It also reflects the "expected resource capability" called for in the statute.
- TEBA believes that batteries are exempt from firming requirements for a reason: so they can use their full capacity to provide firming to other resources.
- TEBA supports allowing load resources to provide firming, and notes that the word "resources" was used intentionally in HB 1500 to allow for this.
- TEBA is concerned that the use of HSL in the seasonal average generation capability will have unintended consequences and make it very difficult for thermal generators and batteries to provide firming.