

## Texas Adopts Legislation to Better Prepare Energy Market for Extreme Weather

14 June 2021

In response to Winter Storm Uri, the Texas legislature has adopted a number of bills that could have a significant impact on the energy industry and energy market participants in Texas. Previously, on May 24, 2021, Texas Governor Greg Abbott signed into law HB 2586, which requires an annual, public audit of ERCOT, to be effective September 1, 2021. Two days later, Governor Abbott signed HB 16, which prohibits the sale of wholesale indexed power plans to residential customers, to be effective September 1, 2021. Then last week, Governor Abbott signed SB 2 and SB 3 into law, effective immediately. SB 2 and SB 3, two of the most significant energy-related bills passed by the Texas legislature this session, will result in substantial changes to the governance of Electric Reliability Council of Texas, Inc. ("ERCOT"), weatherization requirements for generators and pipelines facilities in Texas, and certain aspects of the ERCOT market.

Additional bills passed by the legislature that would have significant impacts on the energy sector remain on Governor Abbott's desk awaiting signature, including three bills that would enable the securitization of most of the outstanding amounts owed by market participants to ERCOT and the securitization of extraordinary gas costs incurred during Winter Storm Uri.

This post addresses key impacts of SB2 and SB3, as well as the status of other legislation awaiting Governor Abbott's signature.

### ERCOT Governance Changes

SB 2 mandates a number of changes to the governance of ERCOT. Of particular note, going forward ERCOT board members will need to be selected by a newly

established committee – the ERCOT board selection committee – which will be composed of one member appointed by the governor, one member appointed by the lieutenant governor and one member appointed by the speaker of the house of representatives.

The ERCOT Board will also no longer have members from the various market sectors. Instead, the ERCOT board selection committee will select eight members with executive-level experience in finance, business, engineering, trading, risk management, law or electric market design. No more than two ERCOT board members may be employed by an institution of higher education in a professorial role. The ERCOT Chief Executive Officer will remain an ex officio member of the board, but will now be a non-voting member.

## Electric Generation Weatherization

Under SB 3, the Public Utility Commission of Texas (“PUCT”) must require by rule that providers of electric generation service, including power generation companies and exempt wholesale generators that sell in the ERCOT market, implement measures to prepare their generation assets to provide adequate electric generation service during a weather emergency according to reliability standards adopted by the PUCT. In turn, ERCOT must inspect generation assets for compliance with the reliability standards, provide the owner of any generation asset a reasonable period of time in which to remedy any violation ERCOT discovers, and report any violation to the PUCT.

The PUCT also must require by rule that a provider of electric generation service for a generation asset that experiences repeated or major weather-related forced interruptions to service: (i) contract with a third party to assess the provider’s weatherization plans, procedures and operations for that asset; and (ii) submit the assessment to the PUCT and ERCOT. The PUCT may in turn require such provider to implement appropriate recommendations included in the assessment.

The PUCT must impose an administrative penalty on any entity that violates any of the rules described above and does not remedy that violation within a reasonable period of time.

The weatherization rules described above must be adopted by no later than six months from the effective date of the law (i.e., by December 8, 2021).

# Emergency Pricing Program

The PUCT must establish by rule an emergency pricing program, which must take effect if the high system-wide offer cap (“HCAP”) has been in effect for 12 hours in a 24-hour period after initially reaching the HCAP. The emergency cap may not exceed any non-emergency HCAP. However, the emergency pricing program must allow generators to be reimbursed for reasonable, verifiable operating costs that exceed the emergency cap.

In a clear effort to address concerns regarding the extraordinary ancillary services prices during Winter Storm Uri, which rose to approximately \$25,000 per megawatt hour, SB 3 also directs the PUCT to establish by rule an ancillary services cap to be in effect during the period an emergency pricing program is in effect. Further, any wholesale pricing procedure that has a low system-wide offer cap (“LCAP”) may not allow the LCAP to exceed the HCAP.

The PUCT must review each system-wide offer cap program adopted by the PUCT, including the emergency pricing program, at least once every five years to determine whether to update aspects of the program. The first such review must be completed by no later than December 31, 2021.

## Ancillary Services

SB 3 requires the PUCT to review the type, volume and cost of ancillary services to determine whether those services will continue to meet the needs of the ERCOT market, and evaluate whether additional services are needed for reliability in ERCOT “while providing adequate incentives for dispatchable generation.” A facility is considered non-dispatchable “if the facility’s output is controlled primarily by forces outside of human control[,]” a definition that appears clearly intended to capture intermittent resources such as wind and solar.

The proposed amendment that would have required ERCOT to procure ancillary services to “manage any reliability impacts of intermittent generation resources” and to “directly assign the costs of such services to intermittent generators consistent with cost-causation principles” was not included in the final version of SB 3. However, SB 3 directs the PUCT to require ERCOT to modify the design, procurement and cost allocation of ancillary services for the region “in a manner

consistent with cost-causation principles and on a nondiscriminatory basis.” This leaves open the possibility that the PUCT could attempt to allocate ancillary services costs to certain types of facilities to the extent it can be demonstrated that such facilities have reliability impacts that require procurement of additional ancillary services.

## Dispatchable Generation Requirements

Under SB 3, the PUCT must ensure that ERCOT establishes requirements to meet the reliability needs of the ERCOT region. The PUCT also must ensure that ERCOT periodically (but at least annually) determines the quantity and characteristics of ancillary or reliability services necessary to ensure appropriate reliability during extreme heat and cold weather conditions, and during times of low non-dispatchable power production in the ERCOT region.

ERCOT must procure these ancillary or reliability services on a competitive basis to ensure appropriate reliability during extreme heat and extreme cold weather conditions and during times of low non-dispatchable power production in the ERCOT region, with the amount of services procured being aimed at preventing prolonged rotating outages. The resources providing such services must be dispatchable and able to meet continuous operating requirements for the season in which the service is procured. Thus, it appears that intermittent resources such as wind and solar will not be able to provide these services.

## Texas Electricity Supply Chain Security and Mapping Committee

Under SB3, a committee (the Texas Electricity Supply Chain Security and Mapping Committee) will be established to, among other things, map Texas’ electricity supply chain, identify critical infrastructure sources in the electricity supply chain and designate priority service needs to prepare for, respond to and recover from an extreme weather event. The map must be produced by no later than September 1, 2022.

## Critical Natural Gas Prioritization and Weatherization

Also under SB 3, the Railroad Commission of Texas (“RRC”) and the PUCT must collaborate to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in Texas as critical customers or critical gas suppliers during energy emergencies. The rules must, among other things:

- require that only facilities that are prepared to operate during a weather emergency may be designated as a critical customer; and
- provide for prioritization of critical natural gas infrastructure for purposes of load-shed during an energy emergency.

The RRC also must require by rule certain gas supply chain operators that are included in the electricity supply chain map and designated as critical by the RRC to implement measures to prepare to operate during a weather emergency.

## Securitization and Other Energy Bills Await Signature

The Texas legislature also passed three bills to address some of the financial impacts of Winter Storm Uri:

- SB 1580, which would enable electric cooperatives to securitize costs and expenses related to Winter Storm Uri so that they can pay outstanding amounts owed to ERCOT;
- HB 4492, which would enable ERCOT to finance the remaining (non-cooperative) short pay amounts so that sellers who are owed funds may be paid, and provides a financing opportunity for load-serving entities that paid certain Winter Storm costs deemed excessive; and
- HB 1520, which would enable the securitization of gas costs relating to Winter Storm Uri.

All three bills remain on Governor Abbott’s desk awaiting signature. The delay on SB 1580 and HB 4492 may in part be attributable to some last-minute lobbying by Brazos Electric Power Cooperative Inc. (“Brazos”), which sent a letter to Governor Abbott on June 4, 2021, urging him to veto the two electric securitization bills and revise them during a special session of the Texas legislature. A number of market sectors responded quickly, with competing letters asking Governor Abbott to sign the electric securitization bills and countering some of Brazos’ arguments.

Nonetheless, at the time of this post, Governor Abbott still has not signed either securitization bill and has not indicated any intent to call a special legislative session to address energy market matters.

Other energy-related bills currently awaiting Governor Abbott's signature include:

- SB 415, which would allow transmission and distribution utilities to own battery storage facilities without violating state laws that require separation of generation and transmission and distribution functions;
- SB 2154, which would increase the number of commissioners on the PUCT from three to five; and
- HB 2151, which would require the designation of certain gas facilities as critical during an emergency.

Under Texas law, because all three securitization bills passed with a vote of two-thirds or more of both houses, they can become effective immediately upon receipt of the governor's signature or passage of 20 days without veto. Thus, if Governor Abbott neither signs the bills nor vetoes them, they will automatically become law on June 21, 2021.

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