

February 12, 2009

Comments on Appeal of PRRs 776 and 791

Submitted by the City of Eastland, TAC Small Commercial Consumer Representative

Board of Directors:

The City of Eastland is a member of the Small Commercial Consumer Segment, and currently holds a seat on TAC. Eastland appreciates the Board of Directors' consideration of these comments relating to the appeal of PRRs 776 and 791 and the comments by Luminant Energy Company ("Luminant") submitted on February 11.

The TAC action to table PRR 776 and 791 for one month immediately following a failed vote to approve the measures, and ERCOT's and Luminant's interpretation of what that means for their appealability, would put stakeholders in a difficult place. Under the apparent interpretation of ERCOT legal, and under the view espoused by Luminant in its comments, a failed motion to approve a PRR does not dispose of the PRR and cannot give rise to an appeal. Rather, according to that view, a successful motion to reject the PRR is necessary.

Since TAC requires a supermajority to take an action to either reject or approve a PRR, this interpretation could put controversial PRRs into a perpetual limbo in which TAC can neither approve nor reject them, while rendering them incapable of being appealed to the Board. The City of Eastland contends that the intent of the protocol revision process is not to transform TAC into a Bermuda Triangle into which difficult issues disappear, never to be resolved.

Eastland strongly disagrees with the procedural interpretations that have led to this circumstance, and it is now not clear to what extent the Board will consider the merits of PRRs 776 and 791 at its February meeting. Luminant's comments filed on February 11 address the merits of pairing the two provisions, and the merits of PRR 791 in particular. The City of Eastland supports TIEC's appeal relating to PRR 776 and will not repeat the points made in that appeal. If the Board of Directors does address the merits of the PRRs, the City of Eastland urges the Board to reject the pairing of the two PRRs and then reject PRR 791.

PRR 791 raises critical legal and policy issues not addressed by Luminant's February 11 comments. By injecting into the balancing energy bid stack a virtual offer curve reaching the system-wide cap across all on-peak hours, PRR 791 would attempt to address what its proponents believe to be a lack of adequate scarcity pricing in ERCOT. But ERCOT currently has a scarcity pricing mechanism, one provided by the PUC in P.U.C. SUBST. R. 25.505(g). That mechanism includes a complex system of escalating

offer caps paired with an exemption from market power prohibitions for small generators. PRR 791 is an attempt to remedy perceived shortcomings with this mechanism, and therefore the issues posed by the PRR are only properly addressed in a rulemaking at the PUC. In contrast, PRR 776 addresses a more narrowly framed pricing phenomenon that itself results from the application of PRR 650, which retroactively modifies the MCPE for intervals in which non-spin is deployed. PRR 776 and 791 are connected only by the coincidence that they both can affect the MCPE, albeit under certain circumstances that are entirely unrelated.

As Eastland noted in written comments on PRR 791 before TAC, the implementation of PRR 791 could have a significant financial impact on consumers. According to the IMM's presentation to WMS in November of 2008, PRR 791 is expected to increase the average annual MCPE by \$2.53 per MWh. Assuming price convergence between the bilateral and balancing markets, and assuming a market-wide energy usage of 307,604 GWh per year (as reported in the 2007 ERCOT Annual Report), the result could be an additional \$776,871,920 per year in costs to consumers.

Finally, if the Board of Directors desires for the stakeholder process to examine scarcity pricing issues in ERCOT, the City of Eastland submits that the proper first steps are to examine ERCOT's use of out-of-merit ("OOM") deployments and its biasing of its load forecast. Both issues were highlighted in 2007 State of the Market Report as potentially hindering scarcity pricing. The effect of these root issues, and how to address them directly, should be fully explored by the stakeholder process before an indirect approach to the issues through administrative price supports is adopted via PRR 791.

Chris Brewster, for the City of Eastland
TAC Small Commercial Consumer Representative