Firm Fuel Supply Service Phase 2 Comments

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Comments

Introduction

Texas Industrial Energy Consumers (TIEC) is a trade association that represents the interests of large industrial consumers in Texas. TIEC's member companies participate in the market as loads that make Firm Fuel Supply Service (FFSS) payments, and some member companies also participate as Generation Resources that may be interested in providing FFSS. Accordingly, TIEC supports a fuel security product that maintains consumer protections to only compensate resources that will actually perform in an emergency and that allows more qualifying resources to compete to provide FFSS.

As proposed, ERCOT's Firm Gas FFSS Product Framework Proposal (the "Framework") does not have sufficient customer protections. If an FFSS resource cannot perform, ERCOT would have a limited amount it could claw-back, which may not adequately incentivize performance during an emergency. Further, the Framework recommends force majeure language for firm storage or transportation agreements that is too broad and may not properly incentivize pipelines to adequately prepare for extreme winter weather. Under the proposal, if a pipeline was unable to deliver natural gas as result of a force majeure, a Generation Resource relying on that pipeline would fail to perform but would not be subject to any penalty or claw-back. This would result in consumers paying for FFSS, but receiving no benefit in return. Therefore, it is important

that ERCOT increase the penalty for non-performance and narrow the recommended force majeure language.

In addition, TIEC recommends the Framework specifically allow Generation Resources to qualify for FFSS under a bundled agreement that still meets all the requirements outlined in the Framework. If entities can enter into one agreement that provides firm natural gas delivery, storage, and service, it may be able to secure those services at a discount and with reduced transaction costs. Such lower costs would likely result in lower FFSS offers. Further, allowing bundled agreements to qualify may expand the number of resources that can submit offers for FFSS, which would increase competition, ultimately benefiting consumers.

Comments

1. The Framework does not have adequate protections for customers who may be forced to compensate resources that do not actually perform in an emergency.

The nature of FFSS means that consumers are paying a premium to ensure that certain Generation Resources will have access to natural gas during extreme cold weather events. Like Black Start Service, FFSS is not needed in most years, but consumers will continue paying for the service to incentivize resources to invest in firm fuel supply for when it is ***actually*** needed. Accordingly, adequate consumer protections to ensure that Generation Resources that receive FFSS payments will perform during an emergency are needed.

Specifically, the Framework should have a significant penalty for nonperformance and a narrow force majeure provision that will limit excused nonperformance by the counterparty. Both are necessary to ensure customers are not paying for resources that will be unable to perform when there are gas shortages or extreme weather events. Under the Framework, if an FFSS resource does not perform because of a curtailment of its natural gas transportation or storage, the resource must submit a report and its applicable agreements to ERCOT. Then, if ERCOT determines the agreement does not ensure firmness, ERCOT can claw back “all sums awarded” unless the agreement was previously approved and contains a “Qualifying Force Majeure Provision.” These provisions are problematic.

First, it is unclear whether the claw-back of "all sums awarded' includes only those sums awarded during the current year or over a longer period of time. If ERCOT can only claw-back sums awarded in the current year, the penalty is inadequate because the resource likely received FFSS payments for many years without having to perform. Consumers would essentially be paying FFSS costs and receiving no benefit in return. Accordingly, the Framework's penalty for FFSS non-performance should be more significant and similar to the penalty for failing to provide Black Start Service, which claws back 100% of the fee paid since the later of the last successful Black Start Resource Availability Test or the last successful start and operation under normal system conditions.[1] This type of claw-back would better incentivize FFSS performance.

Second, the force majeure provisions are not tailored enough to incentivize natural gas pipelines providing firm gas services to prepare for extreme weather events. A pipeline can claim force majeure for non-delivery of natural gas if it complies with the Railroad Commission's weatherization rules and is "properly maintaining" its facilities for reasonably foreseeable issues.[2] However, the pipelines' weatherization rules are less stringent than the weatherization requirement for Generation Resources. The Railroad Commission only requires pipeline operators to implement emergency measures intended to ensure sustained operation during a weather emergency and weatherize the facility using the methods a reasonably prudent operator would take given the type, age, and location of the facility.[3] Conversely, the Public Utility Commission requires generation owners to implement weather emergency preparation measures that could reasonably be expected to ensure the operation of the resource at the 95th percentile minimum average 72-hour wind chill temperature reported for the weather zone in which the resource is located.[4] If pipelines are not winterizing to the same standard as Generation Resources, it's likely that a resource providing FFSS may be operational, but unable to access its fuel due to pipeline failures. To avoid nonperformance due to pipeline failures, the force

[1] ERCOT Nodal Protocol Section 8.1.1.2.1.5 (13)(b).
[2] Framework at 6 (explaining that a pipeline or storage provider cannot claim force majeure to the extent it's caused by "breakdown, failure, freezing or breakage of, or the necessity for making repairs or alterations to, any facilities or equipment caused by a failure to properly maintain such facilities or equipment that is reasonably foreseeable; or a failure to satisfy weatherization requirements under applicable law.").
[3] 16 TAC § 3.66 (c).
[4] 16 TAC§ 25.55 (c)

majeure provisions should encourage pipeline and storage operators to weatherize to the same level as Generation Resources. As such, the Qualifying Force Majeure provision should not allow a facility to claim force majeure unless it implements weather emergency preparation measures that could reasonably be expected to ensure the operation of the resource at the 95th percentile minimum average 72-hour wind chill temperature reported for the weather zone in which the pipeline is located.

2. The Framework should allow more Generation Entities to offer FFSS at a lower cost by specifically authorizing bundled agreements.

To be eligible to provide FFSS under the Framework, a Generation Resource may need to secure (1) a Firm Gas Storage Agreement for an amount of gas for 48-hour deliverability; (2) good title to natural gas in the storage facility; and (3) a Firm Transportation Agreement to transport the natural gas to the Generation Resource. Each of these requirements involves a separate agreement with the same counterparty—intrastate natural gas pipelines. However, the Framework does not contemplate resources entering into bundled agreements that meet the contractual requirements set out in the Framework. Rather than entering into three separate agreements, the Framework should explicitly allow Generation Resources to enter into a single, bundled agreement with an intrastate pipeline that meets the same requirements outlined in the Framework.

Requiring Generation Resources to enter into three separate agreements would limit FFSS eligibility without any reliability or cost justification. Single, bundled agreements with intrastate pipelines that comply with the other requirements of the Framework could reduce transaction costs for Generation Resources. In addition, intrastate pipelines may offer reduced pricing for bundled service, as opposed to an unbundled a la carte package of services. If Generation Resources can provide FFSS at a lower cost, it will likely lower FFSS offers, saving consumers money. Further, permitting bundled agreements to qualify would expand the number of entities eligible to provide FFSS. This would promote competition and efficiency among Generation Resources. Therefore, explicitly permitting bundled agreements that comply with the Framework would likely reduce costs while maintaining the standards outlined in the Framework.

Conclusion

TIEC appreciates the opportunity to provide comments and looks forward to continuing to discuss the implementation of an additional category of FFSS.