December 20, 2024

Electric Reliability Council of Texas

Attn: Technical Advisory Committee

8000 Metropolis Drive

Building E, Ste. 100

Austin, TX 78744

**SENT VIA EMAIL:** RevisionRequest@ercot.com

RE: Comments of the Advanced Power Alliance

Dear Technical Advisory Committee,

The Advanced Power Alliance (APA) and the American Clean Power Association (ACP) serve as the voice of more than 800 member companies that represent a diverse cross-section of the world’s leading energy companies, energy investors, energy consumers, and power generation manufacturers from across the clean power sector that are driving high-tech innovation through the development of generation assets including wind, solar, and energy storage, spurring massive investment in the U.S. economy, including a cumulative investment in Texas of $131 billion to date, while creating jobs for American workers, including more than 47,200 in Texas alone.[[1]](#footnote-2) Projects developed by our member companies and investors generate more than $536.2 million state and local tax dollars for schools, services, and infrastructure, as well multi-generational income for Texas landowners—more than $470 million annually—mainly in rural Texas.[[2]](#footnote-3) Our members’ projects help reduce Texans’ electricity costs and create cleaner air, water, and improved human health.

**Macro-Level Concerns**.

As electricity markets continue to grow and market participants and regulators seek to improve reliability while balancing affordability, it is important for all stakeholders to thoughtfully consider how to achieve our shared goal of powering the Texas economy at affordable prices for Texas’ consumers. However, the proposed Market Design Framework to Meet ERCOT’s Strategic Objectives (the Framework), in its current limited form, leads to many open-ended questions: What is the Framework’s purpose? How will ERCOT use it? What will its impacts be? How does it comply with PURA?[[3]](#footnote-4) Does the intended use of the Framework require Commission input before implementing? Without knowing the answers to those fundamental questions, APA and ACP reserve the right to clarify their comments or to provide additional comments in the future. But, based on the limited information available at this time, and due to the lack of a formal process for filing Market Design comments in the ERCOT forum, we offer the following comments.

We have several concerns, but we will focus primarily on two. First, depending on the degree of change contemplated, instituting the Framework could be a substantial policy determination that must be made by the Commission, or even the Legislature depending on the scope of the proposed changes—especially to the extent these attributes are used to incentivize or preference one type of resource over another. ERCOT’s statutory role is not as a policymaker. Second, it is imperative that all market design changes support the energy-only market and do not have unintended consequences. We are concerned that the changes contemplated by the Framework could (1) be discriminatory, (2) distort the market, (3) drive up consumer costs, and (4) amplify regulatory uncertainty.

***A policy decision of this magnitude may require Legislative or Commission Input***.

The powers and jurisdiction conferred by PURA may be exercised only by the Commission, and the Commission is the sole entity granted authority to regulate and adopt rules affecting electricity markets.[[4]](#footnote-5) PURA sets forth the four functions for which ERCOT exists and policymaking has never been a function of ERCOT.[[5]](#footnote-6)

The Framework presentation provides that ERCOT should “consider drivers for investment” and the “levers available to [ERCOT]” to provide investment signals. This seems to have the potential to represent a significant policy decision that would require the Commission’s input or even a legislative act, depending on the details. We are concerned that by undertaking a significant policy change that would ordinarily result from the decisions of the Commission or the Legislature, the overall goal of bolstering reliability while maintaining a free market and seeking low-cost electricity would be undercut. If the anticipated use of the Framework would result in a major shift in policy or market dynamics, it is appropriate to let the Commission open a rulemaking, seek stakeholder input and then direct ERCOT to conduct the technical studies.

The rules adopted by ERCOT are administrative and executive in nature, not policy-forming. “ERCOT rules,” as defined by the Commission, include protocols, operating guides, market guides, or other procedures constituting a statement of general policy that also [have] an impact on ERCOT’s governance or on reliability, settlement, customer registration, or access to the transmission system.[[6]](#footnote-7) Notwithstanding that rule language, ERCOT does not have carte blanche authority to implement market design reforms that it deems to be in service of system “reliability.” The Commission’s rules provide additional color as to what ERCOT’s role in ensuring “reliability” is: ERCOT shall “maintain the reliability and security” of the grid, including the “instantaneous balancing” of generation and load and “monitoring the adequacy of resources to meet demand.”[[7]](#footnote-8) ERCOT has authority to ensure reliability, but that authority is limited to the engineering and monitoring functions associated with protecting the grid infrastructure. When reading this definition in light of the kinds of ERCOT rules that have been adopted to date, ERCOT adopting a major policy change at its own initiative would represent a significant departure from customary practice in our market.

***Fundamental Market Design Questions Present Unique Risks and Concerns***.

Section 39.001 of PURA is interesting because much of it lays out broad, public policy statements about why the Legislature decided to open electric markets in the ERCOT region to competition. Consistent with this broad, policy-oriented language, many provisions in this Section include limiting principles or provide for exceptions: the requirement to use competitive rather than regulatory methods is not absolute, it is to the greatest extent feasible;[[8]](#footnote-9) competition should not be conditioned *except as authorized by PURA*.[[9]](#footnote-10) However, there is one unambiguous statement that includes no qualifiers and contemplates no exceptions: “Regulatory authorities . . . **may not discriminate against any participant or type of participant** . . . **in the competitive market**.”[[10]](#footnote-11) Valuing or compensating resources differently based on subjectively determined criteria is axiomatic discrimination. Therefore, the implementation of the Framework must comply with PURA and not discriminate against any generation resources.

The competitive wholesale market is designed primarily with one goal in mind: to clear the market at the lowest possible price. This is the beautiful efficiency of a free market. If the markets are currently clearing at the most efficient price, “valuing” resources differently can have only one practical outcome: the market will not clear at the most efficient price, and Texans will pay more for electricity than they should. Ensuring reliability is an important goal, but any market design changes should be balanced by the equally important goal of reducing prices for consumers. Consumers in ERCOT have experienced incredible cost increases since Winter Storm Uri, and this proposal could accelerate the cost spiral if implemented without proper input from the Commission and stakeholders. The use of the Framework should adequately balance all attributes the market needs to function efficiently and reliably, not distort the market with out-of-market actions that increase costs to consumers.

Last, distortionary market interventions will further the regulatory uncertainty that has complicated market investments in recent years. The Commission must continue to set a policy course to be implemented by ERCOT that does not favor one resource over another in a free market. If the market is not really free, investors are going to continue to pause before investing significant capital in the ERCOT market. These concerns have been routinely voiced by commissioners from the dais during open meetings and from all sorts of market participants. The best course is to not discriminate against any resources, focus on lowering prices for consumers, provide market stability and continue to expand on Texas’ all-of-the-above approach to energy development.

**Feedback on Framework Attributes**.

APA and ACP offer the following feedback on the attributes proposed in the Framework.

Flexibility

A resource’s ability to ramp quickly maximizes ERCOT’s ability to respond to disturbances on the grid, and Energy Storage Resources’ (ESRs) ramp speed is second to none. If a framework is ultimately adopted, ESRs should be treated the same as any other dispatchable generation, especially as it relates to flexibility.

Dependability

A resource can only be dispatched consistent with its technical abilities. If a two-hour battery consistently dispatches for two hours at its HSL, there is no reason to discriminate against that battery in market design. All generation resources come together to form a complex puzzle that allows the market to operate reliably, safely, and efficiently. Any dependability metric must recognize the technical realities that different resources operate in.

Availability.

As with dependability, all resources have limitations. On some days it is cloudy, and solar generation will underperform its ideal output. On some days a thermal facility will experience a forced outage because a piece of equipment wore out or an operator made a mistake. There also may be days when thermal units do not have fuel, and the unit is forced out or operates inefficiently. The market also regularly sees excessively hot days in shoulder months when thermal units are permitted to take approved maintenance outages. When it is 101 degrees on October 13th, the market is blessed to have solar, wind and battery energy resources pumping power onto the grid.

Renewable resources are not unreliable; renewable resources merely present forecasting challenges for ERCOT, just as predicting thermal unit forced outages and the ERCOT daily peak load demand is challenging in different ways. However, ERCOT has steadily improved its ability to provide accurate wind and solar forecasts to generation resource owners including via the addition of ERCOT’s intra-hour wind forecasting. ERCOT’s improved forecasting allows grid operators to optimally utilize all sources of generation. It is exceedingly rare for a wind or solar facility to experience a forced outage when the wind is blowing or the sun is shining. On a sunny August afternoon, nothing is more reliable than a solar facility. It has no maximum ambient dry bulb temperature affecting its operating limits. Other kinds of resources have their own availability concerns, such as forced outages due to mechanical breakdowns. If ERCOT is planning to score resources based on their availability, all aspects of availability must be considered, not just some.

Resiliency

Renewable resources and ESRs play a key role in grid resiliency. For example, ESRs excel at providing regulation services. Transmission adequacy is one of the most optimal ways to ensure the ERCOT market’s resiliency. With gigawatts of energy trapped behind transmission constraints on many days, unleashing that energy will alleviate pains associated with many grid issues, such as a thermal forced outage, a large-load trip or bad weather. If ensuring grid resiliency is truly the policy goal, then policy makers should consider all avenues for achieving that goal, not just valuing one kind of generation resource over others.

Quality

Deciding what makes a resource a “quality” resource is an inherently subjective determination. As proponents of an all-of-the-above answer to resource development, APA and ACP do not think the answer for the ERCOT grid in 2024 is to build only renewable resources. This is underscored by the fact that several APA member companies applied for Texas Energy Fund loans. Electric market reliability and resiliency increases with generation resource diversity.

Generation resources should also be adequately compensated for the ancillary and reliability services they provide. For example, ESR inverters capable of providing advanced grid support and contributing to inertia should receive market-based compensation for that service. Failing to do so amounts to an improper tax on resources.

Efficiency

Regulatory interventions in free markets virtually never result in more efficient markets. ERCOT currently enjoys robust day-ahead and real-time markets. Additional meddling in the market, whether in the form of subsidies, more regulation, or a complicated, discriminatory formula that compensates certain generation resources differently than others will not drive prices down for the consumer. It will have the opposite effect. The better course is to continue to allow market forces to determine generation investment until such time as the Legislature decides to implement a capacity market, which it has not done. A policy determination that directly undermines the free market for the purposes of achieving some policy purpose requires legislative action, such as the Texas Energy Fund created by the Texas Legislature and approved by the voters.

Location

This attribute states that the goal is to “enhance value for locating resources closer to where they are most needed.” This attribute is challenging to interpret given that (1) ERCOT determined the best wind availability for renewable resource development and, based on that determination, much renewable development was located far from load centers and (2) so much of the load growth is in Texas’ nonattainment areas that are subject to additional air pollution regulations at the federal level.

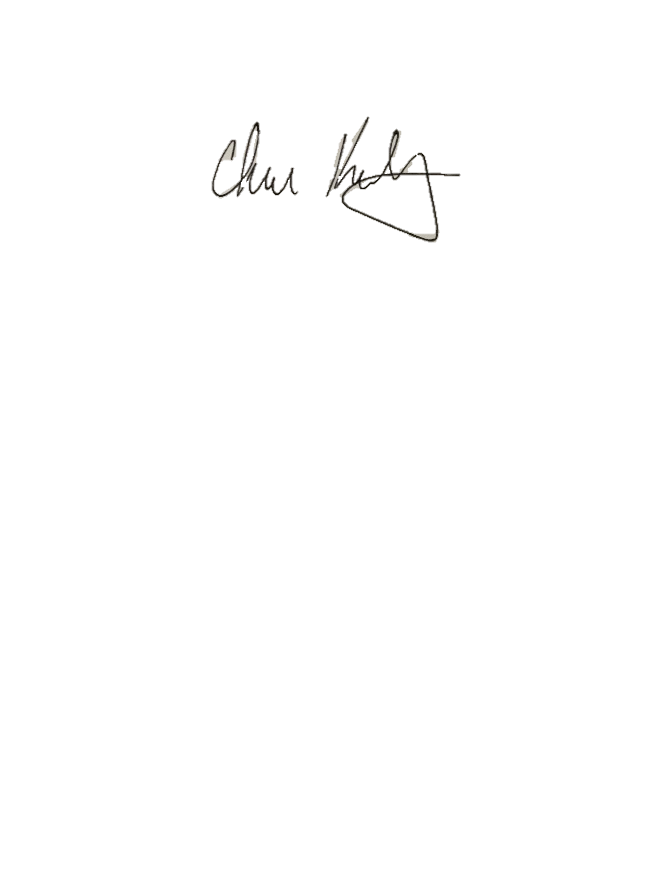
Back in 2005, when the Legislature ordered the construction of the Competitive Renewable Energy Zones (CREZ) transmission lines, the Commission, ERCOT and their consultants embarked on a series of studies and decisions that ultimately determined that the CREZ transmission lines would be in West Texas, the Texas Panhandle, and the South Texas Plains. These generation resource siting decisions were regulatory policy decisions based on ERCOT’s analysis and recommendation. However, in light of all that history, it would be patently unfair and discriminatory to now devalue those resources based on decisions made by ERCOT and then acted upon by developers nearly 20 years ago.

Due to emissions regulations, building new thermal generation in or near Texas’ population centers will also present additional challenges as compared to siting them further from load. Policymakers also must recognize that very few people want to live near any type of power plant, particularly those that produce harmful emissions. These realities ultimately push power plants further from load, which creates the same problem that some renewable facilities experience—the need for more transmission. As Texas continues to upgrade and build out its transmission system, all forms of generation will be better able to serve load around the state.

ERCOT should also remember the fundamental design of the nodal market and the importance of locational marginal pricing. The nodal market itself provides price signals to generation resource developers about where generation should be sited, and it is better to let the market provide those price signals, while also protecting regulatory certainty and accounting for the potential disruption of major market design changes, rather than interfering in the market with heavy-handed, regulatory action.

Kind regards,

MICHAEL BEST & FRIEDRICH LLP



Chris J. Kirby

Counsel to the Advanced Power Alliance

CJK/ans

1. Texas Clean Energy Fact Sheet, American Clean Power Association May 2024. https://cleanpower.org/wp-content/uploads/2024/09/Texas\_clean\_energy\_factsheet.pdf. [↑](#footnote-ref-2)
2. *Id*. [↑](#footnote-ref-3)
3. Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 1.001–66.016 (PURA). [↑](#footnote-ref-4)
4. PURA §§ 12.001, 39.001(c). [↑](#footnote-ref-5)
5. *See* PURA § 39.151(a) (setting forth the four functions that ERCOT must perform). Notably, making substantial policy determinations is absent from the list. [↑](#footnote-ref-6)
6. 16 TAC §25.361(a). [↑](#footnote-ref-7)
7. *Id.* at §25.361(b)(4). [↑](#footnote-ref-8)
8. *Id.* § 39.001(d). [↑](#footnote-ref-9)
9. *Id.* § 39.001(c). [↑](#footnote-ref-10)
10. *Id.* (emphasis added). [↑](#footnote-ref-11)