SIERRA CLUB
LONE STAR CHAPTER

To: The Honorable Todd Hunter, Chair
Members, House Committee on State Affairs
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April 20th - UPDATED TESTIMONY

SB 2012 (Schwertner)/Hunter) Relating to Electric Services

The Sierra Club is supportive of the House version of the bill and appreciate Chairman Hunter's work on the bill. Still we believe it can be improved. The House Committee Substitute to 2012 sets key guardrails around the potential implementation of a PCM, a recent market mechanism tentatively approved by the PUCT. In general, the Sierra Club has opposed the decision to implement a PCM, and while the proposed committee substitute to SB 2012 does not disallow the implementation of a PCM, it puts in important provisions to assure that customers - particularly residential consumers who have less opportunity to manage their energy use during the key hours when the PCM would be implemented - are not on the hook for billions of dollars.

Without legislation to either disallow the PCM or put guardrails on the PCM as contemplated in this bill, the implementation of the PCM by the PUCT could result in billions of dollars of cost on consumers and the erosion of the energy-only market.

First the bill prevents the PUCT from implementing a "reliability program" such as the PCM until both ERCOT and the IMM conducts an assessment of the cost and impact of such a mechanism on the market. **The Sierra Club supports this provision in the bill.**

However, the bill then seems to allow the PUCT to implement the PCM regardless of what the assessment finds. In other words, while requiring the assessment, the bill does not require the PUCT to consider the assessment before implementing any reliability product.

We would instead support both an assessment and a reconsideration of any potential PCM before implementation. Adding language that the Commission can not implement a PCM until it takes a specific decision after the assessment would improve the bill.

Add Section 39.166 (c) and (d) and renumber (c) to be (e)

On Page 2, Line 14 of CS to SB 2012 (88R24220 JXC-D), add the following language:

(c) The assessment provided by the independent organization certified under 39.151 for the ERCOT power region and the independent market monitor must be completed on or before February 1, 2024;
(d) On or before June 1, 2024, the commission shall determine based upon the assessment required under (a) whether it is still in the interests of the state to pursue the proposed reliability program in a public meeting, and allow for stakeholder and public input on the assessment and decision on whether to move forward on implementation of the reliability assessment. If the PUCT does choose to move forward, it will initiate rulemaking and meet the provisions of (e).

Sierra Club's position on the proposed Cap and the Expiration Date

Consumers are already facing very high costs within ERCOT. According to the IMM's recent "State of the Market Report," three recent changes have already put more money in the market and increased costs to consumers. First, the IMM estimated last year that between $210 and $385 million due to the additional procurement of non-spin ancillary services. Second, the increased use of RUC (Reliability Unit Commitment) has led to a higher reliability deployment adder of some $460 million. Finally, changes to the ORDC made last year - lowering the cap but increasing the minimum contingency level have $475M YTD*

Finally, earlier this week on April 18th, the Board of Directors of ERCOT approved a "bridge" solution, increasing the ORDC with a price adder when reserves fall below operating reserves. The proposal would add an adder of either $10 per MWh if reserves fall below 7,500 or $20 per MWh when reserves fall below 6,000 MWs. The proposal - which is likely to be adopted by the PUCT this month - is specifically designed to add $500 million dollars in a way that will earn money for dispatchable generation. IN other words, it is a "bridge" solution to a full PCM and is being designed to cost consumers an additional $500 million. Therefore, it makes strategic sense to adopt a cost cap with a similar amount.

We are very opposed to the proposal by generators to instead impose a price cap of 2X CONE. CONE has not been updated recently, but was most recently set at approximately $103,000 in 2021, meaning that two times CONE at 60,000 MWs that are estimated to be potentially available during PCM hours could equate to over $12 billion. A reminder that a CONE is the amount of money that a gas plant would need to earn to pay it's O & M plus a return on investment. Setting a price cap that is twice what they need to operate from just one part of the market - the PCM - is insulting and ridiculous.

Would the Sierra Club support a compromise on the cap?

We believe a cost cap is key to assure the PCM is not a blank check. We are cognizant that market conditions change and a single number of $500 million might be too limiting.

We would suggest that a price adder be allowed, or a range be authorized. As an example, the legislation could be changed to say "No less than $350 million and no more than $650 million" which would assure some amount of funding for the PCM within a range.

Another approach would be to keep the $500 million cap but allow a range as a percentage such as "$500 million plus an additional amount not to exceed 30% to account for load growth and inflation." **We have suggested some language.**

What about the expiration date?

Sierra Club is supportive of the 2031 expiration date, which would give the Legislature an opportunity in 2029 or 2031 to revisit the program and whether it is still needed.

We would point out that HB 1500 - the PUCT sunset bill which was approved unanimously by the Legislature - extended the PUCT until 2029 already gives the legislature an opportunity to revisit the program in 2029 through the sunset process.

We have suggested some language that would specifically allow the Legislature to extend the program past 2029 in either 2029 or 2031.

Other Proposed Changes

We want to assure that the PCM can be earned by all technologies, including energy storage and controllable loads (demand response). We have put in our suggested language below for assuring this can happen.

Proposed amendment no 2. Rewrite current (b) to make the reliability product technology-neutral and allow controllable load resources to participate

~~(c)~~ (e) The commission may not implement a reliability program described by Subsection (a) unless the commission by rule establishes the essential features of the program, including requirements to meet the reliability needs of the power region, and

the program:

(1) requires the independent organization certified under Section 39.151 for the ERCOT power region to procure the credits centrally in a manner designed to prevent market manipulation by affiliated generation and retail companies;

(2) limits participation in the program to dispatchable resources - including energy storage and controllable load resources - with the specific attributes necessary to meet operational needs of the ERCOT power region;

(3) ensures that a ~~generator~~ resource cannot receive credits that exceed the amount of load reduction or generation bid into the forward market by that resource ~~generator~~;

(4) ensures that an electric generating unit can receive a credit only for being available to perform in real time during the tightest periods of low supply and high demand on the grid, as defined by the commission on a seasonal basis;

(5) ensures that controllable loads can receive a credit only for being available to perform in real time to reduce demand during the tightest periods of low supply and high demand on the grid, as defined by the commission on a seasonal basis;

(~~5~~) (6) establishes a penalty structure, resulting in a net benefit to load, for generators that bid into the forward market but do not meet the full obligation;

(6) provides the wholesale electric market monitor with the authority and resources necessary to investigate potential instances of market manipulation by any means, including by financial or physical actions, and recommend penalties to the commission;

(7)ensures that the cost imposed on the ERCOT market for the credits does not exceed $500 million annually, except that the commission may authorize the costs to rise by an additional 30% above the cap for exceptional events, but in no instance may total costs exceed $650 million on an annual basis.

(8) ensures that any program reliability standard reasonably balances the incremental reliability benefits to customers against the incremental costs of the program based on an evaluation by the wholesale electric market monitor;

(9)establishes a single ERCOT-wide clearing price for the program and does not differentiate payments or credit values based on locational constraints;

(10)does not assign costs, credit, or collateral for the program in a manner that provides a cost advantage to load serving entities who own, or whose affiliates own, generation facilities; and

(11) ensures that the cost of all credits paid to dispatchable resources is allocated to loads based on an hourly load ratio share.

(d) The commission and the independent organization certified under Section 39.151 for the ERCOT power region may not adopt a market rule for the ERCOT power region associated with the implementation of a reliability program described by Subsection (a) that provides a cost advantage to load serving entities who own, or whose affiliates own, generation facilities.

(e) Not later than January 1, 2029, the commission shall require the wholesale electric market monitor to review any reliability program described by Subsection (a) implemented by the commission and submit the results of the review to the legislature.

(f) The commission may not adopt or continue to implement a reliability program described by Subsection (a) after September 1, 2031, unless specifically authorized by the Legislature in 2029 or 2031.