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For more information,
contact:

Jim Bowe

+1 202 626 9601

jbowe@kslaw.com

Craig Stanfield

+1 713 276 7335

cstanfield@kslaw.com

Tyler Brown

+1 404 572 2809

trbrown@kslaw.com

King & Spalding

Houston

1100 Louisiana Street

Suite 4100

Houston, Texas 77002-5213

Tel: +1 713 751 3200

Washington, D.C.

1700 Pennsylvania Avenue,
NW

Washington, D.C. 20006-
4707

Tel: +1 202 737 0500

Winter Weather Readiness Requirements for Generation Entities in Texas

With winter coming, many are questioning whether Texas will be able to avoid another catastrophic loss of power like that experienced during Winter Storm Uri in February 2021. While regulators have known the causes of the catastrophe for months,¹ on October 21, 2021, the Public Utility Commission of Texas (“PUCT”) took steps to “ensure that the [Texas] electric industry is prepared to provide continuous reliable electric service throughout this upcoming winter weather season.”² This Client Alert summarizes the rules the PUCT recently approved to reduce the chances that another winter storm will cause similar devastation.

On October 21, 2021, as directed by Senate Bill 3, 87th Legislature Regular Session of the Texas Legislature,³ the PUCT approved new rules requiring weather emergency preparation measures for the Electric Reliability Council of Texas (“ERCOT”), generation entities, and transmission service providers.⁴ The new rules: (i) adopt certain recommendations identified in a 2012 report commissioned by the PUCT;⁵ and (ii) require fixes to any known issues that arose from the winter weather conditions during the 2020-2021 winter weather season. The new rules are the first phase of two planned phases; the to-be-developed phase two rules will consist of a more comprehensive, year-round set of weather emergency preparedness reliability standards informed by a weather study being conducted by ERCOT in consultation with the Office of the Texas State Climatologist.

The deadline for implementation for many of the new rules is just weeks away, December 1, 2021. For purposes of this Client Alert, we focus on the new requirements for generation entities.⁶



Specifically, under the new rules, a generation entity within ERCOT⁷ must complete the following by December 1, 2021 (referred to throughout this Client Alert as the “December 1 Requirements”):

1. Use best efforts to implement weather emergency preparation measures to ensure sustained operation of all cold weather critical components during winter weather conditions;
2. Install adequate wind breaks for resources susceptible to outages or derates caused by wind; enclose sensors for cold weather critical components; inspect thermal insulation for damage or degradation and repair damaged or degraded insulation; confirm the operability of instrument air moisture prevention systems; conduct maintenance of freeze protection components for all applicable equipment, including fuel delivery systems controlled by the generation entity, the failure of which could cause an outage or derate, and establish a schedule for testing of such freeze protection components on a monthly basis from November through March; and install monitoring systems for cold weather critical components, including circuitry providing freeze protection or preventing instrument air moisture;
3. Use best efforts to address cold weather critical component failures that occurred in the 2020-2021 winter;
4. Provide training on winter weather preparations and operations to relevant operational personnel; and
5. Determine minimum design temperature or minimum experienced operating temperature and other operating limitations.⁸

Also by December 1, 2021, a generation entity must submit to the PUCT and ERCOT, on an ERCOT-prescribed form, a Winter Weather Readiness Report that includes the following:⁹

1. A description of all activities engaged in by the generation entity to complete the December 1 Requirements, including any assertions of good cause for noncompliance with the December 1 Requirements (discussed below); and
2. A notarized attestation sworn by the generation entity’s highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the completion of all December 1 Requirements, subject to any notice of or request for good cause exception, and to the accuracy and veracity of the information.¹⁰

In the event a generation entity cannot comply timely with the December 1 Requirements, there is a mechanism for a generation entity to seek an exception to the December 1 Requirements for good cause. For a generation entity seeking a good-cause exception, the generation entity must submit by December 1, 2021, as part of its Winter Weather Readiness Report, a notice including the following:

1. An explanation and supporting documentation of the generation entity’s inability to comply with a specific December 1 Requirement;
2. A description and supporting documentation of the generation entity’s efforts to comply with the December 1 Requirements; and
3. A plan, including supporting documentation and a proposed deadline, to comply with the December 1 Requirement for which good cause is being asserted.¹¹

The PUCT and ERCOT will review good-cause exception requests, and the PUCT reserves the right to notify the generation entity that it disagrees with the assertion of good cause.¹² If the PUCT disagrees with the assertion of good cause, the generation entity must submit to the PUCT a request for approval of the good-cause exception.¹³ The request for approval must contain:



1. An explanation, with supporting documentation, of the inability of the generation entity to comply with a specific December 1 Requirement;
2. A detailed description and supporting documentation of the efforts that have been made to comply with the December 1 Requirements;
3. A plan, including supporting documentation and a deadline, to comply with the December 1 Requirement for which the good cause exception is being requested;
4. Proof that notice of the request has been provided to ERCOT; and
5. A notarized attestation sworn to by the generation entity's highest-ranking representative, official, or officer with binding authority over the generation entity attesting to the accuracy and veracity of the information in the request for approval.¹⁴

Generation entities that have resources that experience repeated or major weather-related forced interruptions of service are required to contract a qualified, third party professional engineer to assess the generation entity's weather emergency preparation measures, plans, procedures, and operations.¹⁵ The engineer's assessment must be submitted to the PUCT and ERCOT.¹⁶

Finally, the new rules require ERCOT to conduct inspections of resources during 2021-2022 winter weather season, prioritizing such inspections based on risk level.¹⁷ Based on ERCOT inspections, a generation entity may be subject to PUCT enforcement investigation.¹⁸

King & Spalding will continue to monitor developments related to weatherization requirements in Texas. If there are questions regarding the new rules or for help interfacing with Texas regulators, please contact the authors of this Client Alert.

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¹ See The University of Texas at Austin Energy Institute, “*The Timeline and Events of the February 2021 Texas Electric Grid Blackouts*,” (July 2021), available at: http://interchange.puc.texas.gov/Documents/51825_5_1138886.PDF; Letter from ERCOT to Public Utility Commission of Texas (Apr. 6, 2021), available at: http://interchange.puc.texas.gov/Documents/51878_20_1120255.PDF; FERC, NERC and Regional Entity Joint Staff Inquiry, “*February 2021 Cold Weather Grid Operations: Preliminary Findings and Recommendations*,” (Sept. 22, 2021), available at: <https://www.ferc.gov/february-2021-cold-weather-grid-operations-preliminary-findings-and-recommendations>.

² *Rulemaking to Establish Electric Weatherization Standards*, Project No. 51840, Order Adopting New 16 TAC § 25.55 as Approved at the October 21, 2021 Open Meeting (Oct. 26, 2021), available at: https://interchange.puc.texas.gov/Documents/51840_102_1162080.PDF

³ Tex. S.B. 3, 83d Leg., R.S. (2021), available at: <https://capitol.texas.gov/tlodocs/87R/billtext/pdf/SB00003F.pdf#navpanes=0>

⁴ See *Rulemaking to Establish Electric Weatherization Standards*, Project No. 51840, Order Adopting New 16 TAC § 25.55 as Approved at the October 21, 2021 Open Meeting (Oct. 26, 2021), available at: https://interchange.puc.texas.gov/Documents/51840_102_1162080.PDF. 16 TAC § 25.55 (2021).

⁵ Quanta Technology, “*Report on Extreme Weather Preparedness Best Practices*,” Prepared for the Public Utility Commission of Texas (Sept. 28, 2012), available at: <https://www.preventionweb.net/publication/report-extreme-weather-preparedness-best-practices>

⁶ Defined as “an ERCOT-registered resource entity acting on behalf of an ERCOT-registered generation resource or energy storage resource.” See 16 TAC §25.55(b)(3).

⁷ “A generation resource with an ERCOT-approved notice of suspension of operations for the 2021-2022 winter weather season is **not** required to be in compliance under this section until it is returned to service.” See 16 TAC § 25.55(a) (emphasis added).

⁸ 16 TAC § 25.55(c)(1)(A)-(E).

⁹ A generation entity that submits the Winter Weather Reading Report to ERCOT by December 1, 2021 shall be exempt from the requirement in ERCOT Protocols that requires a generation entity to submit the Declaration of Completion of Generation Resource Winter Weatherization Preparations. 16 TAC § 25.55(5) and ERCOT Protocols Section 3.21(3).

¹⁰ 16 TAC § 25.55(c)(2)(A)-(B).

¹¹ 16 TAC § 25.44(c)(6)(A)(i)-(iii).

¹² 16 TAC § 25.44(c)(6)(B).

¹³ 16 TAC § 25.44(c)(6)(C).

¹⁴ 16 TAC § 25.44(c)(6)(E)(i)-(v).

¹⁵ 16 TAC § 25.44(e).

¹⁶ *Id.*

¹⁷ 16 TAC § 25.44(d)(1).

¹⁸ 16 TAC § 25.44(d)(1)(D).