

Voters Approve the Texas Energy Fund

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PRACTICES Energy, Power and Natural Resources, Renewable Energy

On Nov. 7, 2023, Texas voters approved Proposition 7, the state constitutional amendment authorizing the creation of the Texas Energy Fund. Proposition 7 seeks to increase grid-resiliency and reliability by authorizing the Public Utility Commission of Texas (PUC) to provide up to \$10 billion in loans and grants to incentivize investment in large-scale dispatchable generation power plants, smaller-scale backup power sources for certain essential facilities, and other grid-resiliency infrastructure. The majority of the funds are allocated to projects within the Electric Reliability Council of Texas, Inc. (ERCOT) power region, however, \$1 billion of the funds are reserved for grid-hardening investments, such as facility modernization and weatherization improvements, for facilities located outside of the ERCOT power region.

Who is eligible for dispatchable generation funds?

Entities that develop new power plants or upgrade existing power plants to increase dispatchable generation in the ERCOT power region will be eligible for \$2.7 billion in low interest loans and construction bonuses. Dispatchable generation includes facilities powered by natural gas, coal, nuclear, or any other source that “can be controlled primarily by forces under human control.” Facility upgrades or new construction must result in at least 100 megawatts of new dispatchable generation for the ERCOT system. Battery storage projects are specifically excluded from eligibility. Loans will be issued for twenty-year terms at a 3% interest rate.

Completion bonuses of \$120,000 per megawatt of new dispatchable capacity will be available for projects interconnected to the ERCOT grid by June 1, 2026. A reduced bonus of \$80,000 per added megawatt will be available for projects interconnected between June 1, 2026 and June 1, 2029. Loan applicants will be subject to a credit risk assessment. Applicants must meet the PUC’s yet-to-be determined creditworthiness requirements. Loan amounts will be capped at 60% of a project’s estimated cost. Becoming a financial lender is a new role for the PUC, which is not currently tasked with providing loans or assessing the credit risk associated with generation projects. Developing the rules and procedures to implement this new administrative task is likely to be the subject of much stakeholder input over the coming months.

Who is eligible for backup power package funds?

The PUC is also authorized to provide \$1.8 billion in loans and grants for the installation of microgrids, referred to as “backup power packages” in the Texas Energy Fund legislation, to provide stand-alone, behind-the-meter, multi-day power sources for consuming facilities located in the ERCOT region that are relied upon by the community for health, safety, and well-being. The scope of what is considered a facility that is to be relied upon for health, safety, and well-being is yet to be defined by the Legislature or the PUC. Funds may only be awarded to a backup power package that:

- Is engineered to minimize operation costs;
- Uses interconnection technology that will enable immediate islanding from the power grid and stand-alone operation for the host facility;

- Is capable of operating for at least 48 continuous hours without refueling or connecting to a separate power source;
- Is designed so that one or more backup power packages can be aggregated on-site to serve not more than 2.5 MW of load at the host facility;
- Provides power which is sourced from solar panels and battery storage, along with either natural gas or propane; and
- Is not used for the resale of energy or ancillary services.

Grant funding may only be used for operational expenses and may not exceed \$500 per kilowatt (kW) of capacity. However, the PUCT is authorized to award loans for both procurement and operating expenses. Certain entities are statutorily excluded from receiving funding, including (1) commercial energy systems, (2) private schools, and (3) for-profit entities that do not directly serve public safety and human health. No definition for “commercial energy system” has been established, and that definition will likely be determined during the rulemaking process, as discussed below.

What happens next?

The PUCT has already begun working to implement the Texas Energy Fund program. The PUCT held workshops and opened two new projects to seek stakeholder input to develop rules for the program: Project No. 54999, *Texas Energy Fund*, and Project No. 55407, *Texas Backup Power Package Advisory Committee Rulemaking*. On Nov. 2, 2023, the PUCT approved a new rule, 16 Tex. Admin. Code Sec. 25.515, establishing a committee to advise the PUCT on the administration of the Texas backup power package program. The advisory committee will consist of three to nine members and will be tasked with providing the PUCT with a recommendation for the types of Texas backup power packages that should be funded by the program.

The PUCT has a short window to implement the application procedures and review loan applications. The PUCT must begin accepting loan applications no later than June 1, 2024. The advisory committee must make its recommendation to the PUCT by Oct. 1, 2024. The PUCT will then have approximately one year to complete its loan application review. By Dec. 31, 2025, all loan applications must be approved or denied, and initial loan payments must be distributed. Additional workshops and rulemaking activities are anticipated as the PUCT moves ahead with implementing the directives of the Legislature and the voters of Texas to increase the reliability and resiliency of the ERCOT grid.

Senate Bill 2627, the enabling legislation for the Texas Energy Fund, may be accessed [here](#).

If you have any questions, please contact one of the lawyers listed below.