

AEP Texas' Application for Regulatory Approvals Related to Utility-Scale Battery Facilities

PUC Docket No. 46368

**Public Utility Law Section
Annual Meeting and CLE**

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The logo for Enoch Keever PLLC, featuring the name "ENOCH KEVER" in a bold, serif font. The text is white and set against a black rectangular background with a thin white border.

AEP's Proposal

- Two lithium-ion batteries – Paint Rock (Concho County) and Woodson (Throckmorton County) Texas
- Distribution voltage
- Estimated 15-year life
- Approximately 215 end-use customers served in Woodson
- Approximately 270 end-use customers served in Paint Rock
- Energy used to charge and discharge the batteries would be unmetered and classified as “unaccounted for energy” which is effectively an uplifted cost/credit to the load serving entities

AEP's Proposal, cont.

- At Paint Rock: 500 kW/1,000 kWh battery at estimated installation cost of \$700,000 designed to address potential substation capacity limitations
- At Woodson: 1 MW/2MWh battery at estimated installation cost of \$1.6 million designed to address customer outages
- AEP asserted there were significant cost savings by using these battery technologies as opposed to traditional transmission and distribution solutions

Opposition to AEP's Proposal

- Residential and Small Commercial Customers (OPUC)
- Large commercial and industrial consumers (TIEC)
- Competitive Power Generation Companies (PGCs)
- Competitive Retail Electric Providers (REPs)
- Other competitive market participants
- Commission Staff

Opposition to AEP's Proposal

- Cost concerns
- Doubts about potential effectiveness as a reliability solution
- Anticipated negative impacts on competitive wholesale and retail markets
- Undermining of the legislatively mandated market structure

Key Statutory Question

- Does the Public Utility Regulatory Act (PURA) allow a regulated transmission and distribution utility (TDU) in the Electric Reliability Council of Texas (ERCOT) like AEP Texas to own and operate battery storage facilities?
 - PURA § 39.105(a): a TDU “may not sell electricity or otherwise participate in the market for electricity except for the purpose of buying electricity to serve its own needs.”
 - PURA § 39.157(b): “a person that owns generation facilities may not own transmission or distribution facilities in this state”
 - PURA § 35.152(a): “Electric energy storage equipment or facilities that are intended to be used to sell energy or ancillary services at wholesale are generation assets.”

Proposal for Decision

- Recommended approval of AEP's application
- Determined that both sides presented “defensible arguments” and “important policy considerations,” and that the issues raised by the application are “ultimately policy decisions that must be made by the [Public Utility] Commission” (PFD at 4)
- Concluded that the governing laws and regulations could be interpreted to support approval or denial (PFD at 5, 75-76)

PUC Decision

- Did not adopt PFD
- Determined that the case “does not provide sufficient information to allow the Commission to make the declarations sought by AEP” (Final Order at 1)
- Dismissed the proceeding without prejudice and directed the opening of a rulemaking project “to develop the facts necessary to establish a regulatory framework that will allow for the efficient and appropriate use of energy-storage devices as well as other technologies within the limits of PURA” (Final Order at 2)

Questions Left Open

- No decision by the PUC on what PURA expressly allows or prohibits
- PUC recognized that the current regulatory structure is “inadequate” to address AEP’s proposed use of energy storage facilities (Final Order at 3); in what ways would the regulatory framework need to be modified?
- On the issues of market disruption and comparative economics (Final Order at 3-4), what cost/benefit analysis would justify the expense and potential harm to other market segments posed by these types of batteries?
- If batteries may, for some purposes, be classified as distribution assets, would a certification (CCN) proceeding be required (Final Order at 4)?
- AEP’s proposed treatment of the energy used to charge and to be discharged from the batteries (unaccounted for energy – UFE) was deemed “troubling” and “questionable” (Final Order at 3, 5); how might such facilities be charged and operated if TDUs cannot buy and sell electricity except for their own use?