

Hill Country Energy Sub-Regional Planning Commission

April 16, 2025 Meeting Minutes

A meeting of the Hill Country Energy Sub-Regional Planning Commission (hereafter "Commission") took place in the Kerr County Courthouse on April 16th, 2025, in Courtroom 1 due to the exceptionally larger number in attendance. It was opened at 10:00 am with a prayer offered by Commissioner Carpenter and the pledge of allegiance to the American Flag.

The following members of the Board, as appointed by the Kendall and Kerr County Commissioners Courts, were in attendance:

Rich Paces, Kerr County Commissioner, Precinct 2,
Jeff Holt, Kerr County Commissioner, Precinct 3,
Jennifer McCall, Kendall County Commissioner, Precinct 3,
Chad Carpenter, Kendall County Commissioner, Precinct 4, via Teams online streaming,
Linda Bullard, Landowner Representative.

Texas State Representative, Wes Virdell, was unable to attend.

A quorum being present, the Commission considered, discussed and took action as described below for each item on the posted meeting agenda.

Commissioner Paces announced that the first part of the meeting would be devoted to discussion with the Texas Commission on Environmental Quality (TCEQ) representatives, and subsequently we would take up the posted agenda of our regular HCESRPC meeting.

PART I – Planning Coordination Meeting with TECQ

The Members of the Commission introduced themselves.

The TCEQ had sent 6 representatives, and they were introduced:

- Kelly Cook, Deputy Director of Critical Infrastructure Division, Office of Compliance and Enforcement
- Craig Pritzlaff, Director of Office of Compliance and Enforcement
- George Ortiz, Regional Director of the San Antonio Office, which includes HCESRPC area
- Amancio Gutierrez, Assistant Deputy Director to Kelly Cook
- Phillip Ledbetter, Director, Office of Legal Services
- Joel Anderson, Area Director, Office of Compliance and Enforcement

A pointed and detailed discussion took place in which all members of the Commission made observations and posed questions to the TCEQ representatives regarding their concerns with BESS in the Commission's territory. Reference is made to the video of the meeting which is posted at www.HCESRPC.com and which is made part of these Minutes. Some of the concerns and points raised by members of the Commission were:

- the lack of a BESS permitting process and the need for State legislators to step up and give us some protection;

- the County Commissioners Courts' lack of authority to protect the safety, health and welfare of their communities and the environment from the dangers posed by BESS;
- toxic contamination of water and soil caused by utility grade BESS failure;
- inadequacy of foam and water for rural area firefighters, especially in view of prolonged drought conditions in the Hill Country, to fight a BESS fire and protect the surrounding area;
- inability of Volunteer Fire Departments to manage a BESS fire, and the loss of equipment which such an event would cause, such as protective gear, which costs \$10,000 per firefighter;
- the fact that a BESS fire will potentially have effects far beyond the immediate vicinity, and could also impact the food supply;
- the link between BESS and the enormous power demand of AI data centers and cryptocurrency mining operations, which have their own health and environmental impacts;
- difficulty of obtaining information about BESS locations, developers, size, megawatts, safety measures, and emergency preparedness plans;
- Concurrent Resolution 121 under consideration in the Texas House, would declare the Edwards Aquifer a State Treasure, requiring TCEQ to take action to protect it from irreversible environmental damage, such as the toxic contamination which could result from a BESS fire;
- the fact that the biggest lithium-ion battery recycling facility just burned down, leaving a question about whether there will be a viable way to recycle the batteries;
- the vulnerability of BESS to cyber-attacks which could take out the grid, due to the fact that they are unmanned facilities, operated remotely; and
- the fact that there is no time to waste, due to the potentially devastating damage BESS could cause.

The TCEQ responded to all issues, explaining their role in the various aspects of BESS installation, environmental impact, emergency management planning and response, end of life disposal and recycling, and waste management. They highlighted the limitations of TCEQ authority as regards the regulation of BESS facilities and noted that BESS is now on their radar, and they are working to develop their capacity to deal with this still very novel technology. They take specific direction from the State. Their focus is supporting the grid, the environment, communities, local government when there's an emergency, and preparedness for emergencies. They assured the Commission that they are here to support us. Their responses included the following points, *inter alia*:

- TCEQ currently has no specific plan for a worst case BESS scenario, other than to support local governments in their response to a commercial grade BESS emergency. They are the lead State agency for Emergency Hazmat management, under Annex 10 of the Emergency Management Chapter of the Texas Local Government Code. This would include post-emergency remediation, mitigating impacts, monitoring and sampling contamination, and providing direction to responsible parties. They may seek cost recovery from the responsible parties to recover the expenses of these activities. They encouraged HCESRPC to make sure that our local Emergency Management Committee is engaged in the planning and preparedness for a BESS emergency.
- TCEQ does have authority to require a general permit for storm water management in the BESS construction phase.

- They referred to a very helpful study they had commissioned entitled *Environmental Impacts of Decommissioned Solar, Wind, and Electricity Storage Systems* (which is posted on the HCESRPC Website).
- TCEQ can file a petition to initiate a rule-making under a specific program.
- TCEQ can sue corporations if they do not comply with requirements.
- TCEQ has received 85 notifications of BESS construction all over the State, including both stand-alone facilities and those co-located with wind and solar installations.
- When a threshold of 10,000 lbs. of hazardous material is stored on site, a report must be filed with TCEQ. They have received 59 such reports to date.
- TCEQ is able to require “financial assurance” in certain cases, which would be in the form of a bond, but they are for battery recycling facilities, not currently for BESS.

Where the TCEQ representatives could not immediately respond to specific issues raised, they committed to seeking answers to the questions and information requested below and providing it to the Commission:

1. How to file a petition for rule-making?
2. Information from the 85 BESS construction notifications and 59 notifications of 10,000 lbs. or more hazardous substance storage on BESS sites, including location, developer, size, megawatts, etc.
3. Regarding TCEQ’s New Technology Implementation Grant for BESS:
 - a. How much money does TCEQ have to disburse to BESS projects through the NTIG program?
 - b. What is the source of these funds?
 - c. How many applications did TCEQ receive for NTIG BESS grants?
 - d. How many NTIG BESS grant applications have been approved?
 - e. May we have a list of the BESS project applications approved? Will the approved projects be posted online, and if so, how can it be accessed?
4. Does TCEQ define BESS as “dispatchable energy generating units” or “generating assets,” and if so, can residents who live near a BESS request a “contested hearing”? What is the procedure to request such a “contested hearing”?
5. Does TCEQ plan to conduct an independent review on the Moss Landing BESS fire?
6. For our Hill Country Counties which are suffering from prolonged drought, could the TCEQ request a water disaster declaration leading to a moratorium on developments which place an inordinate additional demand on the water supply? How often have such development permits been denied, following cases which went all the way to the 3 TCEQ Commissioners?
7. TCEQ will provide us a contact in the Department of Health Services, whom we can contact about potential health impacts of BESS.
8. Where does TCEQ receive its guidance for wind and solar policy in relation to the grid?

At 11:30 members of the public were invited to speak, and 11 took the floor. Citing various concerns, all speakers expressed strong opposition to BESS facilities in our area. In addition to residents of the HCE Sub-Region, there were citizens from Austin County, as well as citizens from Gillespie County speaking about the Harper BESS, which is located 1000 feet from a K-12 public school with 588 students. TCEQ was asked specifically:

9. to contact the Governor and Dan Patrick and ask for whatever authority they need to protect us from the dangers of BESS;
10. to reconsider granting any funds to BESS facilities through their NTIG program.

Other concerns were that homeowners near BESS sites are losing insurance, that NFPA 855 is not specific enough, that after a BESS worst case scenario, it is too late, so we must aim at prevention rather than clean-up. It was pointed out that one authority Counties do have is the right to look at BESS site plans. Alternatives to BESS were mentioned, such as modular compact nuclear reactors and natural gas.

Representative Wes Virdell's District Director, Barbara Ferguson, spoke about BESS-related bills currently before the Texas Legislature. In particular, she warned of an unacceptable date on HB 3824, authored by Rep. King, who is Chair of the State Affairs Committee overseeing all of the BESS legislation in the House. The date of Jan. 1, 2027 needs to be struck on this bill and replaced by Sept. 2025. She referred to other BESS-related bills, and said that people should take action immediately to support them by making calls to legislators. TLO—Texas Legislature Online—is the best resource for following the bills.

The meeting with TCEQ concluded at noon, and following a 15-minute break, the Commission Resumed its regular posted agenda.

PART II – Regular Posted Meeting of the HCESRPC

1. Approval of the April 16th Draft Meeting Minutes.

A motion was made by Commissioner Holt to adopt the Draft Minutes of April 16th as posted on the Website and seconded by Commissioner McCall. The Motion passed 5-0, and the Minutes were adopted as submitted.

3. Update on Coordination Notices sent to PUCT, ERCOT and LCRA

PUCT: Commissioner Paces reported on the response letter received from Mike Hoke of the PUCT's Public Engagement Department, which has been posted on the Website. They maintain that they have no role to play in the location and type of BESS connected to the grid, and we should be meeting with the developers. Commissioner Paces will send a 3rd letter to PUCT. He will also seek advice from Dan Byfield. At some point we may need to consider legal action through our County Attorney.

ERCOT: Commissioners Paces and Holt had a productive meeting on March 28th by Microsoft Teams with 2 ERCOT representatives. They maintain they have no role in determining or approving the location or type of BESS and that they are obliged to allow any generation project to connect to the grid, as long as they determine that it will not damage the grid. They are willing to take another call but will not come to a coordination meeting.

LCRA: No further communication. Commissioner Holt will talk to his contact at LCRA and push them to come to a coordination meeting.

TCEQ: Will send a request for the BESS site plans in their system along with the meeting minutes when available.

Flat Rock Creek BESS: Initially this project is going to be denied by the County based on the lack of egress. Can Kendall County do what Austin County did and deny it altogether, based on public safety? Consult with an attorney about the legal ramifications of taking such an action.

The meeting recording ended abruptly at this point, unbeknownst to Commission members.

4. Board Member Input on Developing Information

Due to the lack of time, Ms. Bullard proposed that the meeting be restricted to only the most urgent matters. She mentioned a number of important articles, which she will provide to the other members.

5. Discussion on Bills in the Texas Legislature Relevant to BESS

No action was taken.

6. Discussion and Appropriate Action on Focus Tool

Ms. Bullard reviewed the objective of the Focus Tool for a BESS regulatory framework/permitting procedure. While a comprehensive omnibus Bill setting up a PUCT BESS permitting process is what is needed, the current legislative time frame makes it virtually impossible to achieve. It was agreed that she will nonetheless consult with some people knowledgeable about the legislative process, and make a determination whether it's worth pursuing. If we decide to pursue it, will we need to discuss input for the content of the Focus Tool which was distributed at the last meeting.

7. Discussion and Appropriate Action on other Administrative Matters

Ms. Bullard distributed to the Website administrators, Commissioners Paces and McCall, a list of her suggestions for improving the organization, navigability, and readability of the Website, as well as a few corrections.

8. Public Comments

Two members of the public took the floor, Jeff Boerner and Audrey Boerner.

9. Set Next Meeting

The next meeting was set for May 6th at 2 p.m. in the Kendall County Courthouse.

In response to a request from Ms. Bullard, it was decided that henceforth Commission Members may request items to be placed on the HCESRPC agenda up to one day prior to the 72-hour notice requirement for our meetings.

Being required to clear the Courtroom, the meeting ceased at 1:45 p.m.

*Submitted by Linda Bullard, Secretary
Minutes Approved by the Board on 5/6/2025*