



# **Brownsville Public Utilities Board Tenaska Project**

---

Forensic Examination Report

Author: Carr, Riggs & Ingram

Issued: September 29, 2022

---

# Topics of Discussion

---

- Relevance of Presentation
- Summary of parties and their roles (Brownsville Public Utilities Board, Tenaska, RW Beck, Inc. and Black & Veatch)
- Important aspects of Tenaska Project
- Failure of the Tenaska Project
- Need for Forensic Analyst (Carr Riggs & Ingram)
- Conclusions of forensic analyst
- Ethical Lessons Learned and Key Takeaways

# Relevance of Presentation

---

- Illustrates the problems associated with manipulating narrative to achieve a desired objective
- Highlights the practical application of several ethical concepts and how a series of unethical decisions can result in a criminal investigation and/or loss of bond rating and credibility

# Brownsville Public Utilities Board (BPUB)

---

- Seven members, including Mayor
- Major provider of electric, water, and wastewater services in Brownsville
- Peak load of 305 megawatts (MW)
- Electric customer base of approximately 50,000 customers

# Tenaska

---

- One of America's largest private energy development companies
- Handles energy management, development, development services, energy asset acquisition and power plant operations

# RW Beck, Inc. (Beck) Forecast

---

- BPUB hired Beck as a technical consultant to provide an annual peak and energy load forecast for 2009 – 2028
- Problems with Beck Forecast
  - Beck utilized actual figures through 2007 and projections for 2008-2028
  - The figures did not reflect the severe economic downturn in 2008 – 2009
  - Utilized residential average use growth rate substantially above historical growth rate
  - Beck grossly overestimated system energy requirements and annual peak demand – created perception of emergency capacity shortage
  - The Beck Forecast contained multiple disclaimers and qualifiers

# Black & Veatch (B&V) Integrated Resources Plan (2011)

---

- Hired in 2011 to provide an Integrated Resources Plan (IRP) to BPUB
- Intended to assist BPUB with long term planning by evaluating supply and demand for energy services
- RFP stated that IRP should “incorporate the limitations and constraints” of the existing portfolio
- Utilized the inflated load data from the Beck forecast
- Management instructed B&V’s to use the inflated load data from Beck

# B&V IRP (Cont.)

---

- Management directed B&V to add 13.75% to the load projections in the IRP to enhance perceived capacity shortage
- The IRP set out four alternatives and an analysis of the costs and benefits of each
- BPUB selected the most expensive and most risky option: partnering with Tenaska to construct an 800 MW natural gas-fired power plant in Brownsville (Tenaska Project) despite a peak load of 305 MW
- B&V noted the most efficient and economical course of action was to solicit proposals from market participants to weigh all options. RFP was drafted by management but never issued.



# For Scale - 885 MW Tenaska Power Plant in VA

---



# Important Aspects of Tenaska Project

---

- Tenaska and BPUB to partner in constructing an 800 MW natural gas-fired power plant in the Brownsville area
- City of Brownsville would be entitled to 200 MW and Tenaska would sell or find subscribers for the remaining 600 MW
- Anticipated commercial operational date (COD) would be in June 2016
- Letter of Intent executed in 2011
- Definitive Agreement (11 contracts) executed in 2013

# Important Aspects of Tenaska Project — Matters of Note

---

- Required BPUB to bring a 50 mile natural gas transmission line to the plant prior to closing
- Required a series of 5 rate hikes between 2013 – 2016 to cover financial obligations and O&M costs, raising customer rates 36%
- Construction of the plant would not commence until Tenaska secured subscribers
- Tenaska not obligated to reimburse BPUB for costs advanced by BPUB until closing, after subscribers were secured for the additional MW

# Failure of Tenaska Project

---

- Tenaska never secured a single subscriber
- Project dead or dying by 2015 and management knew it
- Tenaska told management the ERCOT market was too soft
- Tenaska Project was not fully terminated until 2020, five years later
- Customers and City Commissioners were led to believe the Tenaska Project was still moving forward for 5 years

# Failure of Tenaska Project: Why perpetuate the narrative?

---

## Carr, Riggs & Ingram (CRI) concluded:

- Management wanted BPUB to be a gas utility provider and believed it would be unable to secure easements if the public learned the Tenaska Project was dead.
- Money. The rate increases generated \$118,000,000 in revenue. BPUB needed a large capital project to justify the rate increases.

# Failure of Tenaska Project: Costs

---

- \$34 million spent on the Tenaska Project
- \$9.2 million spent on legal fees
- \$118 million paid by customers in furtherance of the Tenaska Project
- Severe loss of public trust – community enraged
- Reduction of bond rating several years later

# Need for Forensic Analyst

---

- Customers and City Commissioners were incensed when the Tenaska Project failed and the circumstances came to light.
- City Commissioners engaged CRI to conduct forensic investigation to determine if there was criminal or improper conduct by the Board or management.

# CRI Conclusions

---

- Mayor Martinez, and Management pushed the Tenaska Project on the City as if it was an emergency, using the artificial “imminent” capacity shortage together with a narrative of failed business development efforts, which they claimed were linked to lack of generating capacity – an intentional fabrication.
- Further, given the interference and manipulation of the narrative, it is our opinion that Management, with the participation of Mayor Martinez, intentionally misrepresented or omitted key information in order to ensure that the Project (and its related rate hikes) would be approved by the Board and the COB.



# CRI Conclusions

---

- Management skewed presentations to secure support
- Management manipulated facts and data to create perception of emergency
- Key “disinterested” advisors were placed in a position in which they had severe conflicts of interest
- Management took advantage of the Board’s lack of experience with the subject matter at every turn

# Presentations Skewed to Secure Support

---

- 2011 - Tenaska, which stood to gain millions from the project, sold the Tenaska Project to the Board 2 months before the IRP was finalized
- 2011 – Management presentation to the Board stated inaccurately that the IRP identified a capacity shortage and omitted the following:
  - Operational date would be a year later than projected
  - 50 mile gas transmission line would need to be completed before Tenaska commenced construction
  - B&V's opinion Tenaska was unlikely to find subscribers for 600 MW

# Skewed Presentations (Cont.)

---

- 2012 – Management’s presentation to the Brownsville City Commissioners reduced the IRP presentation to 3-5 slides favorable to the Tenaska Project and omitted all references to overstated figures in the Beck Forecast
- 2015 – Management revised Tenaska’s presentation to the Board to delete Tenaska’s statement: “The truth is the market is not right for this Project to go forward right now.”

# Manipulation of Facts and Data to Create Perception of Emergency

---

- 2011 – Management directed B&V to add 13.75% to the load projections in the IRP to enhance perceived capacity shortage, falsely claiming it was required by ERCOT
- 2011 – Management cited to failed business opportunities due to lack of power generation capacity but no factual support
- 2011 – Management asked the Mayor to use his connections to get a letter of intent from a steel company considering relocating to Brownsville to demonstrate load growth in the service area

## Email from BPUB Executive:

---

- *“What we concluded is that we need to continue to work with BEDC to get a letter of interest from the Monterey steel folks to submit to ERCOT right away... **The added load from the steel mill is critical in demonstrating load growth outside of organic growth models.** Bill did not get a chance to visit with Jason about acquiring the letter from the steel folks. We need to somehow get the BEDC folks working on this while the initial BPUB/Sharyland study is being reviewed at ERCOT.”*

# Manipulation of Facts and Data (Cont.)

---

- 2013 – Tenaska commissioned a report about economic development benefits of the project, which management stated was produced by the Brownsville Economic Development Foundation
- 2015 – During a presentation to the City, management included a slide entitled “Why does BPUB need more power?”
  - Actual load data 8 years old
  - Load projections demonstrably inaccurate by this point
  - Tenaska Project already dead
  - Still perpetuating the narrative

# Manipulation of Facts and Data (Cont.)

---

- 2017 IRP ranked the Tenaska Project as the least attractive of four alternatives
- Management sent draft presentation on the 2017 IRP back to B&V to rerun the data reducing natural gas prices and taking out more attractive scenarios

# B&V Findings in the 2017 IRP Report

| EXPANSION PLAN  | CPWC (\$ MILLIONS) | % HIGHER THAN BEST PLAN | RANK            | COMMENT  |
|---|--------------------|-------------------------|-----------------|--|
| Sensitivity 5. Wind PPA (2018) with Stair-Step Purchase from an Existing Combined Cycle | 1,031              | -                       | 1 <sup>st</sup> | Based on a max. break-even capacity price of \$144/kW-year that would make the plan approx. 2% lower than the Base Case  |
| Sensitivity 4. Stair-Step Purchase from an Existing Combined Cycle                      | 1,032              | -                       | 2 <sup>nd</sup> | Based on a max. break-even capacity price of \$130/kW-year that would make the plan approx. 2% lower than the Base Case  |
| Base Case. BPUB Self-build Case Involving a 285 MW, 1x1 7FA Combined Cycle              | 1,052              | 2.0%                    | 3 <sup>rd</sup> | Candidate units include natural gas fired simple and combined cycle options from 9 MW to 285 MW  |
| Sensitivity 3. 200 MW Purchase from Possible 800 MW Tenaska Unit                        | 1,096              | 6.3%                    | 4 <sup>th</sup> | Considered less likely to be built based on current market conditions. An option involving an existing combined cycle as in Sensitivity 4 and 5 is more likely |



# Contrast Management Representation of B&V Findings in the Presentation of the 2017 IRP

CPWC Ranking from Lowest to Highest

| EXPANSION PLAN   | CPWC (\$ MILLIONS) | RANK | COMMENT  |
|--|--------------------|------|--|
| 200 MW BPUB ownership of Tenaska Plant                   | \$1,004            | 1st  | Development by Tenaska subject to favorable market conditions. BPUB will participate in ownership with Tenaska.                                  |
| Wind PPA + 115 MW PPA from existing ERCOT combined cycle | \$1,059            | 2nd  | Combination of energy and capacity from wind and gas-fired generation resources from the market under long-term Power Purchase Agreements (PPAs) |
| 150 MW PPA from existing ERCOT combined cycle            | \$1,060            | 3rd  | Single energy sourced from a gas-fired generation resource under long-term PPA   |
| 350 MW BPUB combined cycle                               | \$1,082            | 4th  | Size reflects economies of scale for capital and operating costs but requires merchant sales of excess energy into the market                    |

# Manipulation of Facts and Data (Cont.)

---

## 2017 IRP Presentation:

- Cumulative plant worth cost (CPWC) of Tenaska Project was changed from \$1,096 to \$1,004
- CPWC of the alternative B&V placed first was changed from \$1,031 to \$1,059 thereby reducing its ranking
- 350 MW combined cycle and 150 MW power purchase agreement options were omitted
- Comment describing the Tenaska Project as “less likely to be built based on current market conditions” was deleted.
- B&V’s recommendation that BPUB send out an RFP to explore more economical sources of power was deleted
- Two years after the Tenaska Project stalled indefinitely, still misleading people to believe it was proceeding

# Key Advisor with Conflict of Interest: The Yzaguirre Group

---

- The Yzaguirre Group (Yzaguirre) was hired to serve as an “independent set of eyes and ears” for the Board
- In 2015, Yzaguirre began marketing the subscriptions for Tenaska
- Tenaska paying BPUB \$35,000 per month; BPUB paying Yzaguirre \$35,000 per month
- Tenaska employee on BPUB payroll, which benefitted greatly from delaying termination of the Tenaska Project

# Key Advisor with Conflict of Interest: B&V

---

- B&V prepared both IRPs, ostensibly to make recommendations to BPUB on the best plan to address future energy needs
- B&V was also hired to be a power consultant for the Tenaska Project
- B&V stood to gain millions if the Tenaska plant was constructed
- B&V had substantial personal stake in the path chosen by BPUB

# Board Role

---

- CRI concluded that “Board members should have been more skeptical and asked more questions.”
- There was a lack of institutional knowledge due to the limited terms of the Board members. They were heavily reliant on management to provide context.
- The Mayor actively conspired with management to intentionally misrepresent or falsify key facts.
- The Board was aware of the project’s demise by November 2017 but chose not to notify the Brownsville City Commissioners or the public until August 2020.

# Ethical Lessons Learned and Key Takeaways

---

- Trust but verify. The Board trusted management. Management was not trustworthy. Important never to be so trusting that you simply assume management is beyond reproach.
- For complex or important issues, read the report. This is the best way to ensure the presentation is consistent with the report.
- The end does not always justify the means. You do not want to select a course of action and then manipulate the process to get there. It's important to follow legal (procurement), policy, and ethical requirements.
- Consider your source. Is the person giving the presentation a company that stands to gain tremendously from the decision the Board is making?

# Ethical Lessons Learned and Key Takeaways (Cont.)

---

- Heed disclaimers. The IRP and Beck Forecast were riddled with disclaimers and qualifiers to which no one paid any attention.
- It is important to ensure that there is transparency at all times in communications with the City, the public and the Board at all times.
- Do not place key “independent” advisors in a position of conflict. Ensure third-party advisers do not stand to benefit from the project, or, like Yzaguirre, from delays in the project.
- Make sure you are utilizing current data and that the data always supports the chosen course.

# QUESTIONS?

---

