

PROJECT NO. 34560

RULEMAKING PROCEEDING TO	§	PUBLIC UTILITY COMMISSION
AMEND PUC SUBSTANTIVE RULES	§	
RELATING TO SELECTION OF	§	OF TEXAS
TRANSMISSION SERVICE	§	
PROVIDERS RELATED TO	§	
COMPETITIVE RENEWABLE	§	
ENERGY ZONES AND OTHER	§	
SPECIAL PROJECTS	§	

**PROPOSAL FOR PUBLICATION OF NEW §25.216
AS APPROVED AT THE DECEMBER 7, 2007, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes new §25.216, regarding Selection of Transmission Service Providers. The proposed new rule will establish a process for entities interested in constructing certain transmission improvements to submit expressions of interest to the commission. The rule also establishes the procedure whereby the commission selects the entity or entities responsible for constructing the transmission improvements, and specifies any requirements deemed appropriate by the commission to ensure that such entities complete the ordered improvements in a timely and cost-effective manner. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 34560 is assigned to this proceeding.

Mr. T. Brian Almon, Director, Electric Transmission Analysis, Infrastructure and Reliability Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Almon has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the development of transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones. This development will assist the State of Texas in achieving its goal for renewable energy. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Almon has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, February 12, 2008, at 9:30 a.m. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 32 days after publication. Sixteen copies of comments to the proposed amendment

are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 34560.

In addition to the proposed new language, the commission requests that parties submit comments on the following question:

Are there other provisions that should be considered to provide incentives to TSPs to obtain right-of-way by agreement with landowners without increasing the overall cost of the line?

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §35.005 which grants the commission authority to order transmission service and construction or enlargement of facilities; PURA §37.051, which requires in part that electric utilities obtain a certificate of convenience and necessity (CCN) from the commission prior to providing service to the public; PURA §37.056, which establishes conditions under which the commission may grant or deny a CCN; PURA §39.203(e), which in part directs the commission to require an electric utility or a transmission and distribution utility to construct or enlarge

transmission or transmission-related facilities for the purpose of meeting the goal for generating capacity from renewable energy technologies under PURA §39.904(a) and directs the commission to issue final orders in proceedings related to this provision before the 181st day after the date the application is filled with the commission; and specifically, PURA §39.904 which requires the commission to develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones and to consider the level of financial commitment by generators for each competitive renewable energy zone in determining whether grant a certificate of convenience and necessity.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.005, 37.051, 37.056, 39.203(e), and 39.904.

§25.216. Selection of Transmission Service Provider.

- (a) **Application.** This section shall apply to any transmission service provider (TSP) that intends to submit an application to construct, operate, and maintain one or more CREZ Transmission Plan (CTP) Facilities.
- (b) **Purpose.** The purpose of this section is to state the requirements that govern the selection of one or more TSPs that will be responsible for the construction, operation, and maintenance of CTP Facilities.
- (c) **Definitions.** The following words and terms when used in this section shall have the following meaning unless the context indicates otherwise:
- (1) **CREZ Transmission Plan (CTP)** -- The transmission capacity plan required by §25.174(c)(2) of this title (relating to Competitive Renewable Energy Zones).
 - (2) **CTP Facility** -- A new substation or transmission line with or without a substation as identified in the CREZ Transmission Plan.
 - (3) **CTP Proposal** -- An application to serve as a Designated TSP for a CTP Facility that is submitted by a Qualified TSP.
 - (4) **Designated TSP** -- A Qualified TSP that the commission has ordered to construct, operate, and maintain one or more CTP Facilities.
 - (5) **Interested TSP** -- An entity seeking status as a Designated TSP that meets the definition of a Transmission Service Provider as defined by §25.5(143) (relating

to Definitions) or that commits to meeting such definition as necessary to fulfill its obligations as a Designated TSP.

- (6) **Qualified TSP** -- An Interested TSP that has been approved by the commission as meeting the requirements of subsection (e) of this section.
- (d) **Selection process.** The following steps outline the process the commission will employ to select Designated TSPs.
- (1) The commission shall establish a time period in which Interested TSPs may file applications for status as Qualified TSPs. To qualify, each such Interested TSP must demonstrate in its application that it has available or has reliable and ready access to sufficient and adequate resources to construct, operate, and maintain CTP Facilities. The commission will designate Qualified TSPs based on this section, staff's recommendation, and other relevant information. The commission may limit the size or type of CTP Facilities for which a Qualified TSP may be selected to construct, operate, and maintain.
 - (2) Following commission approval of a CREZ Transmission Plan, the commission may solicit CTP Proposals from Qualified TSPs and may establish a deadline by which such CTP Proposals must be filed.
 - (3) To facilitate the comparison of CTP Proposals from Qualified TSPs to construct, operate, and maintain specific CTP Facilities, the commission may prepare a list of CTP projects for which it seeks CTP Proposals. Each project shall consist of one or more distinct CTP Facilities. The list of projects may be included in an order in a proceeding to establish Competitive Renewable Energy Zones or as a

separate determination. In addition, the commission may require that CTP Facilities within a CTP project be separated for purposes of filing applications for certificates of convenience and necessity (CCNs), with the result being that more than one CCN application may be required for a particular CTP project.

- (4) A Qualified TSP may submit an application to construct, operate, and maintain the CTP Facilities included in a CTP project in a proceeding initiated for that purpose. The commission will review such TSP Proposals and may authorize one or more of the Qualified TSPs to construct, operate, and maintain specific CTP Facilities as a Designated TSP. The commission's decision will be based on this section, staff's recommendation, and other relevant information.
- (e) **Qualification of Interested TSP.** In order to qualify to submit an application to construct, operate, and maintain CTP Facilities, an Interested TSP must demonstrate that it meets the relevant requirements in this subsection. An Interested TSP or Designated TSP must continue to meet the relevant qualification requirements in this subsection until the date that the CTP Facilities are placed in-service.
- (1) The Interested TSP must demonstrate that it has or has access to adequate financial resources to finance the licensing, design, Right-of-Way (ROW) and land acquisition, construction, operation, and maintenance of CTP Facilities, in accordance with subsection (f) of this section.
 - (2) The Interested TSP must demonstrate that it has available or has reliable and ready access to technical and managerial resources necessary to efficiently and effectively manage the licensing, design, ROW and land acquisition, construction,

operation, and maintenance of CTP Facilities. Such demonstration must include a description of the following technical and managerial resources:

- (A) Capability and experience of the Interested TSP that would enable it to comply with all scheduling and operating requirements for the transmission system. This information shall include resumes for key management personnel.
 - (B) Capability and experience of the Interested TSP in managing or performing the licensing, design, ROW and land acquisition, construction, maintenance, and operation required for the relevant CTP Facilities. This information shall include resumes for key management personnel.
- (3) The Interested TSP must demonstrate that its business practices are consistent with designation to license, design, acquire ROW, construct, operate, and maintain CTP Facilities. It shall provide the following information regarding its business history for the current calendar year and the three calendar years immediately preceding its filing under subsection (d)(1) of this section:
- (A) Any complaint history and compliance record with federal regulatory agencies, state public utility commissions, attorney general offices, or other applicable regulatory agencies in states where the Interested TSP is conducting business or has conducted business. This information should be provided regarding the Interested TSP; the Interested TSP's affiliates that provide or have provided utility-related services such as telecommunications, electric, gas, water, or cable service; and the Interested TSP's predecessors in interest and principals.

- (B) A summary of any instances in which the Interested TSP is currently under investigation or is a defendant in a proceeding involving an attorney general or any state or federal regulatory agency, either in Texas or in another state or jurisdiction, for violation of any laws, including regulatory requirements.
- (4) The Interested TSP must provide the following information:
 - (A) An affidavit stating that the information provided under this subsection is true and that the applicant will comply with the applicable rules in this title.
 - (B) Other evidence, at the discretion of the Interested TSP, that supports the capability of the Interested TSP to efficiently and effectively manage the licensing, design, ROW and land acquisition, construction, operation, and maintenance of CTP Facilities.
- (f) **Selection of Designated TSP.** If the commission solicits CTP Proposals from Qualified TSPs, it may select one or more Qualified TSPs to construct, operate, and maintain each CTP Facility with the objective of providing the needed CTP Facilities in a manner that is most beneficial and cost effective for customers.
 - (1) Each Qualified TSP shall submit with its CTP Proposal an update of the information set out in subsection (e) of this section and include for each separate CTP Facility an implementation plan discussing:
 - (A) The process that will be used for the preparation of any required applications for CCNs.

- (B) A general description of the CTP Facility including proposed structure types (lattice, monopole, etc.) and composition (wood, steel, concrete, hybrid, etc.), conductor size and type, and ROW width.
- (C) The projected timeline from the date of Designated TSP selection to the date of CTP Facility in-service, with the following intermediate dates:
 - (i) start and completion of engineering and design;
 - (ii) start and completion of material and equipment procurement;
 - (iii) start and completion of ROW and land acquisition;
 - (iv) start and completion of construction; and
 - (v) project in-service.
- (D) The type of resources (in-house labor, contractors, other TSPs, etc.) contemplated for the design, engineering, material and equipment procurement, construction, and management of the CTP Facility, including ROW and land acquisition.
- (E) The type of resources contemplated for operation and maintenance of the CTP Facility after it is in-service.
- (F) The estimated costs to procure and erect (including design, engineering, materials, labor, transportation and other necessary expenses but excluding ROW and land acquisition) tangent, 30-degree and 90-degree structures and the type of conductor that would be used for the CTP Facility.
- (G) The actual average operating and maintenance cost-per-mile previously incurred by the Qualified TSP for each of the last five years for all

transmission lines of the same voltage that are owned and operated by the Qualified TSP. If the Qualified TSP has not previously incurred such costs for transmission lines of the same voltage, it shall provide a detailed explanation and estimate of its anticipated average annual operating and maintenance costs for the transmission line portion of the CTP Facility.

- (H) The Qualified TSP's prior experience in obtaining transmission facility licenses and constructing, operating, and maintaining facilities with similar qualities such as structure-type, line length, and voltage ("similar facilities"). If the Qualified TSP does not have experience obtaining transmission facility licenses and constructing, operating, and maintaining similar facilities, it shall provide information concerning the qualifications and experience of the resources upon which it intends to rely to carry out these functions. It shall also specify whether the resources are employees of the Qualified TSP or will be engaged on a contractual basis. Resumes for all executive, managerial, and supervisory personnel that will be involved in obtaining a transmission CCN and constructing, operating, and maintaining facilities shall be provided.
- (I) The Qualified TSP's preexisting procedures for acquiring ROW and land and managing ROW and land acquisition for similar facilities. If the Qualified TSP does not have such preexisting procedures, it shall provide a detailed description of its plan for acquiring ROW and land and managing ROW and land acquisition.

- (J) The Qualified TSP's preexisting procedures for mitigating impact on affected landowners and addressing public concerns regarding similar facilities. If the Qualified TSP does not have such preexisting procedures, it shall provide a detailed description of its plan for mitigating the impacts on affected landowners and addressing public concerns regarding similar facilities.
- (K) A proposed financial plan that:
 - (i) identifies and quantifies all capital resources that are available to finance the CTP Facility and provides the terms, covenants, restrictions, encumbrances, or contingencies associated with each capital resource; and
 - (ii) identifies and quantifies the financial impact of the construction of the CTP Facility on the value, credit rating, and liquidity position of the transmission company, including, but not limited to scenarios, assumptions, and conclusions for expected cash flows, cost recovery, and expected return on investment.
- (2) The Qualified TSP must establish that it has adequate financial resources as described below:
 - (A) The Qualified TSP or its parent corporation or controlling shareholder providing a guaranty to the Qualified TSP under subparagraph (B) of this paragraph must demonstrate an investment-grade credit rating as defined in subparagraph (C) of this paragraph and:

- (i) tangible assets in excess of liabilities of at least \$120,000,000 on its most recent audited financial statement; or
 - (ii) the following minimum financial ratios obtained from the TSP's most recently available financial statements:
 - (a) funds from operations-to-interest coverage of 1.5x;
 - (b) funds from operations-to-total debt of 10x; and
 - (c) total debt-to-total capital no greater than 65%.
- (B) The Qualified TSP must demonstrate that its financial status would remain secure if it were awarded Designated TSP status by filing a financing commitment letter, line of credit, letter of credit, or other appropriate financing vehicle that would serve to fund at least 60% of the initial cost of the relevant CTP Facilities.
- (C) For a Qualified TSP to establish its investment-grade credit rating it may rely upon its own investment-grade credit rating or a bond, guaranty, or corporate commitment of an investment-grade rated company. The determination of such investment-grade quality will be based on the credit ratings provided by Standard & Poor's (S&P), Moody's Investor Services (Moody's), or any other nationally recognized rating agency including Fitch Ratings for financial institutions and A. M. Best for insurance companies. The minimum investment credit ratings that will satisfy the requirements of this paragraph include "BBB-" for S&P, "Baa3" for Moody's, or their financial equivalent. If the relied-upon rating agency suspends or withdraws the investment grade credit rating, the Qualified

TSP must provide alternative financial evidence within ten days of such suspension or withdrawal.

(D) To the extent a Qualified TSP relies on an affiliated transmission or distribution utility for credit, investment, or other financing arrangements, it shall demonstrate that any such arrangement complies with §25.272(d)(7) of this title (relating to Code of Conduct for Electric Utilities and their Affiliates).

(E) In addition to information otherwise required under this subsection, a Qualified TSP shall provide a summary of any history of bankruptcy, dissolution, merger, or acquisition of the Qualified TSP or any predecessors in interest.

(3) The commission shall select the owner of any facility that is identified in the Transmission Plan as requiring an upgrade to be the Designated TSP for such upgrade, unless the owner requests that a different TSP be selected.

(g) Performance of Designated TSP.

(1) When the Designated TSP files its CCN application with the commission, it shall provide the following information, in addition to the information required under other sections of this title.

(A) The estimated cumulative cost for the CTP Facility in the following categories for each three-month interval starting with CCN approval to the date the CTP Facility is placed in-service:

(i) CCN acquisition;

- (ii) ROW and land acquisition;
- (iii) engineering and design;
- (iv) procurement of material and equipment; and
- (v) construction of facilities.

The commission shall approve an estimated cumulative cost for the CTP Facility.

- (B) A schedule for the CTP Facility that provides major project milestones with dates and the percentage completion every three months from CCN approval to the date the CTP Facility is placed in-service for the following four major functions:

- (i) engineering and design;
- (ii) ROW and land acquisition;
- (iii) material and equipment procurement; and
- (iv) construction of facilities.

The commission shall approve a schedule for the project.

- (C) The estimated cumulative cost approved pursuant to subparagraph (A) of this paragraph and the schedule approved pursuant to subparagraph (B) of the paragraph shall form the performance plan addressed by subsection (h) of this section.

- (2) The order granting a CCN may require the Designated TSP to provide a performance bond in the amount of 10% of the reasonable cost of the CTP Facility, as determined by the commission. The bond shall be subject to forfeiture if the commission finds that the TSP has failed to substantially meet a

performance plan approved by the commission for the CTP Facility. The bond shall be submitted within 30 days of the issuance of a final, appealable order in the CCN case.

- (3) After the commission grants the CCN for the CTP Facility, the Designated TSP shall file with the commission a status report every three months until the project has been placed in-service. The status report shall include actual costs and completion dates for major milestones that correspond to the costs categories and schedule approved under paragraph (2) of this subsection. The report shall also include a demonstration that the Designated TSP continues to comply with the financial standards prescribed by this section.
- (4) During the construction of the CTP Facility, the Designated TSP shall file with the commission a detailed explanation of the reasons for any of the following deviations:
 - (A) any step in the schedule is exceeded by more than 60 days; or
 - (B) the total cost estimate at any step is exceeded by more than 5%.
- (5) The commission may revoke the Designated TSP's CCN for the project for failure to meet the estimated cumulative cost or the schedule approved pursuant to this subsection.

(h) **Performance Incentives.**

- (1) Within the time established in the final order in the CCN proceeding, the Designated TSP shall file detailed procurement and installation costs for each type of structure (tangent, 30-degree, and 90-degree) and the conductor that will

be used for the project. If the estimated costs for the conductor and each structure are less than 95% or more than 105% of the corresponding costs estimated in the CTP Proposal, the Designated TSP shall provide a detailed explanation of the reason for the difference. The commission may adjust the estimated costs in the performance plan to reflect these changes. Any increase in the estimated cost may be approved only if the commission concludes that the revised costs differ from the costs submitted by the Designated TSP in connection with its application to be designated to construct, operate, and maintain CTP Facilities, for reasons beyond the Designated TSP's control and ability, with appropriate diligence, to estimate.

- (2) Not later than six months after the in-service date of a CTP Facility the Designated TSP shall file information comparing the estimated cost and in-service date approved by the commission to the actual cost and in-service date. If the actual total project costs exceed the estimated total costs in the performance plan by 5% or more, the Designated TSP will be subject to a downward adjustment to its return on equity, or for an electric cooperative or municipal owned utility, the applicable debt coverage ratio. If the actual total project costs are less than the estimated total costs in the performance plan by 5% or more, the Designated TSP will qualify for an upward adjustment to its return on equity or applicable debt coverage ratio. If the actual in-service date is later than the in-service date in the performance plan by 60 or more days, the Designated TSP will be subject to a downward adjustment to its return on equity or applicable debt coverage ratio. If the actual in-service date is earlier than the in-service date in

the performance plan by 60 or more days, the Designated TSP will qualify for an upward adjustment to its return on equity or applicable debt coverage ratio. Actual total project costs and in-service date reported by the Designated TSP will be subject to verification by the commission. The commission will adjust the cost or schedule benchmarks in the performance plan if the Designated TSP proves that the actual cost or in-service date was adversely impacted by force majeure. For the purposes of this subsection, “force majeure” means a major event or combination of major events, including new or expanded state or federal statutory or regulatory requirements; hurricanes, tornadoes, ice storms, or other natural disasters; or acts of war, terrorism, or civil disturbance, beyond the control of the Designated TSP.

- (A) If the Designated TSP qualifies for an upward adjustment of the rate of return under this subsection, its return on equity or applicable debt coverage ratio for the investment in this project will be increased by 50 basis points or 5%, respectively, for each 5% increment that the costs are below the estimated total costs in the performance plan and, additionally, for each 60-day increment that the actual in-service date is earlier than the in-service date in the performance plan, with a maximum adjustment of 200 basis points or 20%. This adjustment shall remain in effect through a rate rider for five years from the date the rates for the CTP Facility take effect.
- (B) If the Designated TSP is subject to a downward adjustment of the rate of return under this subsection, its return on equity or the debt coverage ratio

for the investment in this project will be decreased by 50 basis points or 5% respectively, for each 5% increment that the costs are above the estimated total costs in the performance plan and, additionally, for each 60-day increment that the actual in-service date is later than the in-service date in the performance plan, with a maximum adjustment of 200 basis points or 20%. This adjustment shall remain in effect through a rate rider for five years from the date the rates for the CTP Facility take effect.

(i) **Filing requirements.**

- (1) A Designated TSP shall use the commission form entitled “Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line Pursuant to P.U.C. Subst. R. 25.174” when filing a CCN application for a CTP Facility.
- (2) A Designated TSP filing a CCN application for a CTP Facility shall also file with the application all testimony in support of the application at the same time the application is filed.

- (j) **Procedures for petitions to be selected a Designated TSP.** Following the initiation of a proceeding to select Designated TSPs to construct, operate and maintain CTP Facilities in accordance with subsection (d) of this section, Qualified TSPs may file an application to be designated to construct, operate and maintain the CTP Facilities included in a CTP project by the deadline established by the commission. The presiding officer shall set a procedural schedule that will enable the commission to issue a final order in the

proceeding within 180 days after the deadline to file applications unless good cause exists for a different schedule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 10th DAY OF DECEMBER 2007 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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