

PUC DOCKET NO. 25880

JOINT PETITION OF RELIANT ENERGY,	§	
INCORPORATED AND TXU	§	PUBLIC UTILITY COMMISSION
GENERATION COMPANY LP FOR	§	
COMMISSION PROCEEDING TO	§	OF TEXAS
IMPLEMENT SWITCHING PROCEDURES	§	
FOR ERCOT CAPACITY AUCTIONS AND	§	
REQUEST FOR EXPEDITED	§	
CONSIDERATION	§	

ORDER

This Order addresses the implementation of switching procedures for the capacity auctions conducted pursuant to the P.U.C. SUBST. R. 25.381, Capacity Auction. For the reasons discussed herein, the Commission approves the *Second Revised ERCOT Capacity Auction Switching Procedures* (Switching Procedures) attached to the *Unanimous Second Revised Stipulation and Agreement Regarding ERCOT Capacity Auction Switching Procedures* (Stipulation). [It should be noted that the signatories to the Stipulation entitled that document “unanimous,” however, the Stipulation is in fact an unopposed non-unanimous stipulation.]

I. Discussion

On May 9, 2002, the Commission established this proceeding to address the issues regarding the implementation of the Switching Procedures for capacity auctions beginning with the September 2002 auction. At the request of the Public Utility Commission of Texas (Commission), Commission Staff (Staff), the AEP Companies¹ (AEP), TXU Generation Company LP (“TXU Generation”), TXU Energy Trading Company LP (“TXU Energy Trading”), Reliant Energy, Incorporated (REI), Office of Public Utility Counsel (OPUC) and Alkera, Inc. (Alkera) worked together to develop procedures allowing auction bidders to switch between auction products during the auction process and committed those procedures to writing for review in this docket. The parties reached settlement on all issues regarding the Switching Procedures.

The Stipulation was filed May 24, 2002. The Signatories² to the Stipulation recommended that the Commission approve the Switching Procedures. No party opposed the Stipulation.

The Public Utility Regulatory Act (PURA)³ § 39.153 requires certain electric utilities (including their affiliated Power Generation Company (PGC)) to auction entitlements to 15% of its

¹ Central Power and Light and West Texas Utilities Company

² OPUC, TXU Generation, TXU Energy Trading, AEP and REI.

installed capacity in Texas. P.U.C. SUBST. R. 25.381 was recently revised in Project No. 24492.⁴ The revised rule becomes effective August 1, 2002, and is applicable beginning with the capacity auction that, pursuant to P.U.C. SUBST. R. 25.381(h) (1) (A) (i), starts on September 10, 2002. Likewise, the Switching Procedures are to be effective beginning with the capacity auction that starts on September 10, 2002.

The Commission has reviewed the motions and the attached documents. The Commission determines that the motions are in the public interest and are consistent with PURA, should be granted and the described documents should be adopted. The Commission adopts the following findings of fact and conclusions of law:

II. Findings of Fact

Procedural History

1. On December 1, 2000, the Commission adopted P.U.C. SUBST. R. 25.381 regulating the statutorily required 15% capacity auction and defining the products to be auctioned (capacity auction products).
2. On August 8, 2001, the Commission established Project No. 24492,⁵ to revise P.U.C. SUBST. R. 25.381.
3. On January 18, 2002, Staff published revisions to P.U.C. SUBST. R. 25.381 (Revised Rule) in the *Texas Register*.
4. Interested parties filed comments on the Revised Rule on or before February 19, 2002, and filed reply comments on or before March 4, 2002.
5. On April 17, 2002, Commissioner Perlman issued a memo requesting that the Revised Rule include provisions to allow bidders to switch between auction products and suggested specific language revisions to the proposed rule to accomplish this task.

³ TEX. UTIL. CODE ANN. §§ 11.001-64.158 (West 1998 & Supp. 2002).

⁴ *Rulemaking Proceeding to Revise Substantive Rule § 25.381, Capacity Auction*, Project No. 24492 (Pending). Section 25.381, as revised in this proceeding, was adopted at the May 23, 2002 Open Meeting. See TR at 235-243 (May 23, 2002).

⁵ *Id.*

6. The Commission took up Project No. 24492 at its April 18, 2002 open meeting. At that meeting, the Commission requested that capacity auction sellers file cost and implementation-time estimates to include switching procedures in the Revised Rule.
7. On April 30, 2002, TXU Generation, AEP and REI filed joint cost and implementation-time estimates as requested by the Commission.
8. On May 2, 2002, Commissioner Perlman reissued the memo he filed on April 17, 2002, requesting that the Revised Rule include provisions allowing bidders to switch between auction products and suggested specific language revisions to the proposed rule to accomplish this task.
9. On May 2, 2002, the Commission directed TXU Generation, AEP and REI to work with Alkera, a consulting firm with experience in auction switching procedures, to devise switching procedures to be effective by the September 2002 auctions.
10. On May 9, 2002, TXU Generation and REI filed the *Joint Petition for Commission Proceeding to Implement Switching Procedures for ERCOT Capacity Auctions and Request for Expedited Consideration* (Joint Petition) to establish this proceeding to review the Switching Procedures.
11. On May 10, 2002, AEP filed a *Motion to Expand Issues in Docket and Conditional Motion to Intervene*, seeking to include the issues of contract terms and pricing for the contract between the auction sellers and any entity that may provide products and services to help implement the Switching Procedures.
12. On May 13, 2002, TXU Energy Trading Company LP and TXU Generation Company LP filed motions to intervene in this docket.
13. On May 14, 2002, Reliant Energy, Incorporated filed a motion to intervene in this docket.
14. On May 15, 2002, TXU Generation, REI and AEP filed in this docket the *Non-Unanimous Stipulation and Agreement Regarding ERCOT Capacity Auction Switching Procedures and ERCOT Capacity Auction Switching Procedures*. This original stipulation requested good cause exceptions to the capacity auction rule.
15. On May 15, 2002, the Administrative Law Judge (ALJ) in this case issued Order No. 1 in this docket, setting a pre-hearing conference for May 20, 2002.

16. On May 16, 2002, OPUC filed a motion to intervene in this docket.
17. On May 16, 2002, the ALJ issued Order No. 2 in this docket, requiring (1) Staff to file by May 17, 2002, recommendations addressing the adequacy of notice of the Stipulation, statutory authority for adopting the Switching Procedures, Staff's recommendation regarding the Stipulation, Staff's response to AEP's motion to expand and the specific provisions of Substantive Rule 25.381 that must be waived in order to implement the Switching Procedures, and (2) Stipulating Parties to file by May 17, 2002, a proposed order containing findings of fact, conclusions of law, and ordering paragraphs consistent with the Stipulation and Switching Procedures.
18. On May 16, Staff filed a memo in Project No. 24492, which was subsequently revised on May 20, 2002, (Staff Memo) recommending certain changes to the Revised Rule. Those changes were the result of discussion at the May 2, 2002 open meeting and were made based on suggestions by the Commission in that open meeting.
19. The Staff Memo proposed modifications to P.U.C. SUBST. R. 25.381(h)(6) of the Revised Rule such that ERCOT capacity auctions will not be subject to certain provisions of subsection (h)(6) that are in conflict with the Switching Procedures. Instead the ERCOT auctions will be conducted according to the Switching Procedures and certain provisions of subsection (h) (6) that were specifically listed in the Staff Memo.
20. The provisions of P.U.C. SUBST. R. 25.381(h)(6) made inapplicable to ERCOT PGCs by the Staff Memo are the only provisions in the Revised Rule that conflict with the Switching Procedures.
21. The change proposed in the Staff Memo eliminates the need for any good cause exception in order to implement the Switching Procedures.
22. On May 17, 2002, AEP filed a "*Notice of Settlement.*" That Notice reported that a settlement had been reached in principle between TXU Generation, AEP and REI as to the allocation of costs between the sellers for products and services necessary to implement switching procedures. AEP withdrew its *Motion to Expand Issues in Docket and Conditional Motion to Intervene.*

23. On May 20, 2002, a pre-hearing conference was convened to establish the procedural schedule and identify pending issues in this proceeding. The ALJ required the parties to file an updated stipulation by May 20, 2002, set May 22, 2002 as the deadline for requesting a hearing, required the parties to file an updated proposed order by May 24, 2002, and set May 30, 2002 as the deadline for filing comments to the updated proposed order.
24. On May 20, 2002, the parties to the original stipulation filed the *Non-Unanimous Revised Stipulation and Agreement Regarding ERCOT Capacity Auction Switching Procedures* and *Revised ERCOT Capacity Auction Switching Procedures*. Among other things, this revised stipulation recognized that, as a result of the Staff Memo, good cause exceptions to the capacity auction rule were no longer required to implement switching procedures.
25. On May 20, 2002, the ALJ issued Order No. 3, granting intervention to TXU Generation Company LP, TXU Energy Trading Company LP, Reliant Energy, Incorporated, Office of Public Utility Counsel and American Electric Power Companies (AEP).
26. No party requested a hearing in this docket.
27. On May 24, 2002, the parties to the original stipulation and OPUC and TXU Energy Trading Company LP filed the *Unanimous Second Revised Stipulation and Agreement Regarding ERCOT Capacity Auction Switching Procedures* (Stipulation) and *Second Revised ERCOT Capacity Auction Switching Procedures* (Switching Procedures).
28. No party opposed the Stipulation or the Switching Procedures.
29. The following documents are admitted into the evidentiary record: 1) the *Non-Unanimous Stipulation and Agreement Regarding ERCOT Capacity Auction Switching Procedures*, that includes as an attachment the *ERCOT Capacity Auction Switching Procedures*; 2) the *Non-Unanimous Revised Stipulation and Agreement Regarding ERCOT Capacity Auction Switching Procedures*, that includes as an attachment the *Revised ERCOT Capacity Auction Switching Procedures* and 3) the *Unanimous Second Revised Stipulation and Agreement Regarding ERCOT Capacity Auction Switching Procedures*, that includes as an attachment the *Second Revised ERCOT Capacity Auction Switching Procedures*.

Stipulation

30. The *Unanimous Second Revised Stipulation and Agreement Regarding ERCOT Capacity Auction Switching Procedures* seeks approval of the *Second Revised ERCOT Capacity Auction Switching Procedures*.
31. This Stipulation is the product of negotiation and compromise among the intervenors.
32. The non-stipulating parties to this docket were afforded the opportunity to be heard on the merits of the Stipulation.
33. No party to this docket objected to or opposed the Stipulation.
34. Implementing the Switching Procedures does not require any good cause exceptions to the revised capacity auction (P.U.C. SUBST. R. 25.381).

III. Conclusions of Law

1. The Public Utility Commission of Texas has jurisdiction over the parties and the subject matter in this proceeding, and the authority to adopt the Switching Procedures described herein, pursuant to PURA §§ 14.001, 32.001, and 39.153.
2. The provision of notice in this proceeding complies with P.U.C. PROC. R. 22.55. Notice to affected persons was given by serving the *Joint Petition*, by US mail on May 9, 2002, on all parties to PUCT Docket No. 23774⁶, PUCT Docket No. 24888⁷, and PUCT Docket No. 24492. Such notice was reasonable considering the short time available to implement the Switching Procedures in time for the September 2002 auction.
3. This proceeding was processed in accordance with the requirements of PURA and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-092 (Vernon 2000 & Supp. 2002) (APA).

Stipulation

4. The terms of the Stipulation are fair, just and reasonable, and supported by the record.

⁶ *Proceeding to Implement the Capacity Auction Rule*, Docket No. 23774 (Sept. 6, 2001).

5. The Stipulation is consistent with the requirements of PURA § 39.153, P.U.C. SUBST. R. 25.381 and P.U.C. SUBST. R. 25.3.

IV. Ordering Paragraphs

In accordance with the findings of fact and conclusions of law, the Commission issues the following Order:

1. The *Second Revised ERCOT Capacity Auction Switching Procedures*, consistent with its *Unanimous Second Revised Stipulation and Agreement Regarding ERCOT Capacity Auction Switching Procedures*, are approved. These Switching Procedures will be effective beginning with the September 2002 capacity auction.
2. The entry of an order consistent with the Stipulation does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Stipulation. The entry of an order consistent with the Stipulation should also not be regarded as a binding holding or precedent as to the appropriateness of any principle or methodology underlying the Stipulation.
3. All motions or requests for entry of specific findings of fact and conclusions of law, and other requests for general or specific relief not expressly granted, are denied for want of merit.

⁷ *Proceeding to Address March 2002 and July 2002 Capacity Auctions*, Docket No. 24888 (Feb. 7, 2002).

SIGNED AT AUSTIN, TEXAS the 19th day of June 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

REBECCA KLEIN, CHAIRMAN

BRETT A. PERLMAN, COMMISSIONER

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