

PROJECT NO. 34577

PROCEEDING TO ESTABLISH	§	PUBLIC UTILITY COMMISSION
POLICY RELATING TO EXCESS	§	
DEVELOPMENT IN	§	
COMPETITIVE RENEWABLE	§	OF TEXAS
ENERGY ZONES	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO §25.174
AS APPROVED AT THE JULY 2, 2009 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.174, relating to Competitive Renewable Energy Zones (CREZs). The amendment will implement Public Utility Regulatory Act (PURA) §39.904(g), which directs the commission to consider the level of financial commitment by renewable generators for each CREZ in determining whether to grant a certificate of convenience and necessity (CCN). The amendment addresses the level of financial commitment that renewable generators must satisfy before the commission will process the CCN applications for transmission facilities to serve certain CREZs previously designated by the commission, and deletes language that would be inconsistent with the changes resulting from the amendment. In addition, the amendment clarifies the conditions under which the commission may initiate a proceeding to address the issue of excess development in a CREZ.

For the three southern CREZs, McCamey, Central, and Central West, the commission has determined that the amount of renewable generation already developed in those CREZs and the amount of additional renewable generation currently under development demonstrate sufficient financial commitment in those zones. The commission finds that installed generating capacity and continuing construction of new generation are the best measures of

wind-generator financial commitment. The commission believes that generators have already proven that new generation development has or will occur to use the new transmission lines built to these CREZs.

In reaching this conclusion, the commission has relied on ERCOT data about installed renewable generation and signed interconnection agreements. In Docket Number 33672, the commission designated the McCamey, Central, and West Central zones as CREZs to be served by new transmission facilities necessary to support generation capacities of 1859, 3047, and 1063 megawatts, respectively. As of June 1, 2009, those three CREZs already had 906, 5221, and 1012 megawatts of installed renewable generation. Additionally, those three CREZs already had interconnection agreements for 300, 987, and 716 megawatts of new renewable generation. The developers' interest in these three southern CREZs is sufficient to satisfy the three tiered financial commitment test proposed in this amendment to §25.714. Accordingly, the commission believes the financial commitment requirement has already been met for the southern CREZs. For the two CREZs in the Texas Panhandle, Panhandle A and Panhandle B, the commission proposes a tiered approach to evaluate whether renewable generators have made sufficient financial commitments in those CREZs to warrant the processing of CCNs for the transmission facilities identified in Docket Number 33672 for the Panhandle CREZs. Project Number 34577 is assigned to this proceeding. The amendment is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e).

Danielle Jaussaud, Director of Market Analysis, Competitive Markets Division, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amendment.

Ms. Jaussaud has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to increase the amount of electricity delivered to customers from renewable generation resources in Texas, consistent with the goals that have been established in PURA. The specific benefits include increasing the use of a resource with no fuel cost by the state's electricity customers, reducing the use of generation technologies that result in air emissions, and diversifying the state's portfolio of electric generating resource.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this amendment. There may be economic costs to persons who choose to provide evidence of the financial commitment pursuant to this amendment. The amendment will ensure that the construction of transmission facilities needed to deliver electric output from renewable energy technologies to customers will be done in a manner that is most beneficial and cost-effective to customers.

Ms. Jaussaud has also determined that for each year of the first five years the amendment is in effect, there will be no impact on local economies as a result of implementing or

administering this amendment, and therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, 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, August 11, 2009, at 10:00 a.m.

Initial comments on the amendment 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 20 days after publication. Reply comments may be submitted within 31 days after publication. Sixteen copies of comments on the amendment are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. The commission also invites comments on the following question:

Should a requirement that renewable energy developers post a security deposit be added to any Tier of the proposed three-Tier test to establish financial commitment in the Panhandle CREZs? If so, how should the amount be determined? What procedure should govern the posting of the deposit? Should the deposit be posted

with ERCOT or with a TSP designated to build transmission facilities in or to the Panhandle CREZs? What event should trigger a return of the deposit?

All comments should refer to Project Number 34577.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 39.101(b)(3), 39.151, and 39.904 (Vernon 2007 & Supplement 2008) (PURA). Section 14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.101(b)(3) provides that a customer is entitled to have access to providers of energy generated by renewable energy resources; §39.151 provides the commission with authority over electricity dispatch and grid reliability in ERCOT and over the accounting for the production and delivery of electricity among generators and all other market participants in ERCOT; and §39.904 provides the commission with the authority to adopt rules necessary to administer and enforce the programs to promote the development of renewable energy technologies and requires the commission to designate competitive renewable energy zones and develop a plan to construct transmission capacity necessary to deliver electric output from renewable energy technologies to electricity customers in a manner that is most beneficial and cost-effective to the customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.101, 39.151, and 39.904.

§25.174. Competitive Renewable Energy Zones.

(a) (No change.)

(b) **Level of financial commitment by generators for designating a CREZ.**

(1) - (2) (No change.)

(c) **Plan to develop transmission capacity.**

(1) - (3) (No change.)

~~(4) No later than one year after an order by the commission designating a CREZ, the TSP or TSPs selected to provide transmission service in or to a CREZ shall file applications for all required certificates of convenience and necessity (CCNs) for transmission facilities identified by the commission in the CREZ order as most beneficial and cost-effective to the customers. The commission may allow additional time for a TSP to file an application upon a showing of good cause by the TSP. The commission may establish a filing schedule if a CREZ order requires numerous CCN applications.~~

~~(5) A CCN application for a transmission project intended to serve a CREZ need not address the criteria in PURA §37.056(c)(1) and (2).~~

~~(6) Within 45 days of an application for a CCN for transmission improvements filed pursuant to the order designating the zone a CREZ, each developer for that CREZ shall post a letter of credit or other collateral to an amount equal to 10% of the developer's pro rata share of the estimated capital cost of the transmission improvements covered by the CREZ order, including the TSP's cost of preparing its CCN application. If any developer fails to deposit the~~

~~required funds, the commission may take appropriate action, including, but not limited to, the following: reconsideration of its CREZ designation; dismissal of the TSP's CCN application; seeking another developer to step into the shoes of a defaulting developer; ordering the return of all deposits to developers who made adequate deposits; ordering the application of the defaulting developer's deposits toward the costs incurred by TSPs pertaining to planning and CCN proceedings for the transmission facilities covered by the order designating the zone a CREZ; and ordering the return of any remaining balance to the defaulting developer.~~

~~(7) In evaluating the CCN applications, the commission shall consider the level of financial commitment by generators. The TSP may propose modifications to the transmission improvements described in the CREZ order if such improvements would reduce the cost of transmission or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate. The commission may direct ERCOT to review modifications proposed by the TSP.~~

(d) **Certificates of convenience and necessity.** No later than one year after an order by the commission designating a CREZ, the TSP or TSPs selected to provide transmission service in or to a CREZ shall file applications for all required certificates of convenience and necessity (CCNs) for transmission facilities identified by the commission in the CREZ order as most beneficial and cost-effective to the customers. The commission may allow additional time for a TSP to file an application upon a

showing of good cause by the TSP. The commission may establish a filing schedule if a CREZ order requires numerous CCN applications. ~~**Obligation to take transmission service in a CREZ**~~

- (1) A CCN application for a transmission project intended to serve a CREZ need not address the criteria in PURA §37.056(c)(1) and (2).~~A developer that deposited funds in accordance with subsection (b)(1) or (c)(6) of this section shall take transmission service in the CREZ no later than one year after the TSP notifies it that the transmission system is capable of accommodating the developer's renewable energy facility, unless the commission approves an extension of time. If the developer does not take transmission service as required, the developer shall be considered to have forfeited, for the benefit of the TSP, all collateral, letters of credit or funds it has deposited.~~
- (2) In evaluating the CCN applications, the commission shall consider the level of financial commitment by renewable generators. Existing generation and generation under construction in the McCamey, Central, and Central West CREZs approved by the commission in Docket Number 33672 satisfy the financial commitment requirement for approval of CCN applications for transmission facilities approved by the commission related to those zones.~~If the developer completes the generation facilities and begins delivering energy from the CREZ within one year of the completion of the transmission improvements, the TSP and ERCOT shall refund to the developer all collateral, letters of credit or funds it has deposited.~~

- (3) The TSP may propose modifications to the transmission improvements described in the CREZ order if such improvements would reduce the cost of transmission or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate. The commission may direct ERCOT to review modifications proposed by the TSP.
- (4) Notwithstanding paragraph (2) of this subsection, for the Panhandle A and Panhandle B CREZs approved by the commission in Docket Number 33672, commission staff shall initiate one or more proceedings for the commission to determine the level of financial commitment by renewable generators. If the commission determines that the financial commitments for the Panhandle A or B CREZ satisfy paragraph (5) of this subsection, the commission shall process the CCN applications for transmission facilities related to that CREZ in accordance with this section and §25.101 of this title, (relating to Certification Criteria.) If the commission determines that the financial commitments for one of these CREZs do not satisfy paragraph (5) of this subsection, the commission shall order that CCN applications for CREZ transmission facilities related to that CREZ not be filed. If at a later date the commission determines, in another proceeding initiated pursuant to this paragraph, that paragraph (5) of this subsection has been satisfied, the commission shall establish a new filing schedule for the applications.
- (5) The commission will permit a CCN application to proceed if it concludes that the level of financial commitments for new CREZ generation capacity made by

renewable generators for the relevant CREZ meets or exceeds one of the Tier standards in this paragraph. Within a tier, an existing or planned renewable generation project cannot be counted more than once.

(A) The Tier 1 financial commitment threshold will be satisfied if the sum of generating capacity from the following meets or exceeds 50% of the generating capacity for the CREZ as ordered by the commission:

(i) existing generation in the CREZ; and

(ii) generation projects under construction that will be operational within 6 months in the CREZ.

(B) The Tier 2 financial commitment threshold will be satisfied if the sum of generating capacity from the following meets or exceeds 75% of the generating capacity for the CREZ as ordered by the commission:

(i) existing generation in the CREZ;

(ii) generation projects under construction that will be operational within 6 months in the CREZ;

(iii) planned projects with signed interconnection agreements with a transmission service provider that has been designated to construct and operate transmission facilities for the CREZ;

(iv) capacity represented by purchases of surface rights to land for at least 20 years in a CREZ as calculated at a presumptive conversion factor of 60 acres per megawatt; and

(v) capacity represented by a non-utility entity's contractual commitments to build and own transmission facilities dedicated to delivering the output of renewable energy resources in the CREZ to the transmission system of a transmission service provider that has been designated to operate transmission facilities for the CREZ.

(C) The Tier 3 financial commitment threshold will be satisfied if the sum of generating capacity from the following meets or exceeds 100% of the generating capacity for the CREZ as ordered by the commission:

(i) existing generation in the CREZ;

(ii) generation projects under construction that will be operational within 6 months in the CREZ;

(iii) planned projects with signed interconnection agreements with a transmission service provider that has been designated to construct and operate transmission facilities for the CREZ;

(iv) capacity represented by purchases of surface rights to land for at least 20 years in a CREZ as calculated at a presumptive conversion factor of 60 acres per megawatt;

(v) capacity represented by a non-utility entity's contractual commitments to build and own transmission facilities dedicated to delivering the output of renewable energy resources in the CREZ to the transmission system of a transmission service

provider that has been designated to operate transmission facilities for the CREZ; and

(vi) capacity represented by applications for interconnection agreements with a transmission service provider that has been designated to operate transmission facilities for the CREZ.

- (e) ~~ExcessDisincentives for excess~~ **development in a CREZ.** If the aggregate level of renewable energy capacity for which transmission service is requested for a CREZ exceeds the maximum level of renewable capacity specified in the CREZ order, and if the commission determines that the security constrained economic dispatch mechanism used in the power region to establish a priority in the dispatch of CREZ resources is insufficient to resolve the congestion caused by excess development, the commission may initiate a proceeding and may consider limiting~~limit~~ interconnection to and/or establishing~~establish~~ dispatch priorities regarding the transmission system in the CREZ, and identifying~~identify~~ the developers whose projects may interconnect to the transmission system in the CREZ under special protection schemes. ~~Priority in interconnecting to the transmission system may be based on a number of factors, including financial commitments of the developers in accordance with subsections (b) and (c) of this section. In determining such priority, the commission may also consider the progress that a developer has made in obtaining the transmission studies required for a new generator interconnection as indications of financial commitment.~~

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 6th DAY OF JULY 2009 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**