

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	§	

**ORDER ADOPTING NEW §25.216
AS APPROVED AT THE MAY 22, 2008 OPEN MEETING**

The Public Utility Commission of Texas (commission or PUC) adopts new §25.216, relating to *Selection of Transmission Service Providers* with changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9476). The rule establishes a process for entities interested in constructing and operating certain transmission improvements to submit expressions of interest to the commission and for the commission to select the entity or entities responsible for constructing the transmission improvements, and addresses 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 Public Utility Regulatory Act (PURA) §39.001(e). The rule is adopted under Project Number 34560.

The commission received written comments on the rule and a question posed by the commission from AEP Texas Central Company, AEP Texas North Company, and Electric Transmission Texas, LLC (AEP/ETT); Airtricity, Inc., whose name subsequently changed to E.ON Climate & Renewables North America, Inc., and PPM Energy, Inc., whose name subsequently changed to Iberdrola Renewables, Inc. (E.ON/Iberdrola); Brazos Electric Power Cooperative, Inc. (Brazos); CenterPoint Energy Houston Electric, LLC (CenterPoint); Electric Reliability Council of Texas,

Inc. (ERCOT); Eurus Energy America Corporation (Eurus); Horizon Wind Energy (Horizon); ITC Panhandle Transmission, LLC (ITC); Joint Commenters (AEP Texas Central Company, AEP Texas North Company, CenterPoint, CPS Energy, Eurus, Horizon, LCRA, and Oncor); Lower Colorado River Authority Transmission Services Corp. (LCRA); Lone Star Transmission, LLC (Lone Star); Luminant Energy Company, LLC and Luminant Generation Company, LLC (Luminant); Oncor Electric Delivery Company, LLC (Oncor); Sharyland Utilities, LP (Sharyland); South Texas Electric Cooperative, Inc. (STEC); Texas Coalition of Cities for Utility Issues (Cities); Texas Farm Bureau; Texas Industrial Energy Consumers (TIEC); Trans-Elect Texas, LLC (Trans-Elect); and Senator Royce West.

The commission received written reply comments from AEP/ETT, CenterPoint, E.ON/Iberdrola, Cities, ERCOT, ITC, Joint Commenters, LCRA, Lone Star, Luminant, Oncor, Sharyland, STEC, the Wind Coalition, and TIEC.

A public hearing on the rule was held at the commission offices on February 12, 2008, at 9:30 a.m. Representatives from AEP/ETT, CenterPoint, E.ON/Iberdrola, ERCOT, Horizon, Lone Star, LCRA, Oncor, Sharyland, STEC, TIEC, and the Wind Coalition provided comments.

In addition to seeking comments on the rule, the commission posed one question for comments:

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?

The Texas Farm Bureau recommended that transmission service providers (TSPs) be required to negotiate in good faith with affected property owners and pay attorneys' fees for landowners in

some cases. AEP/ETT, CenterPoint, E.ON/Iberdrola, Oncor, and STEC responded that the Texas Farm Bureau's recommendation to pay attorneys' fees in some cases is outside the commission's jurisdiction and would invite appeal. LCRA stated that the Texas Farm Bureau's "bona fide offer" language is superfluous given Section 21.0112 of the Texas Property Code. LCRA and Oncor stated that the Texas Farm Bureau's proposal to require attorneys' fees if the Designated TSP's offer does not match the condemnation award would greatly increase the cost and time required for transmission projects, and would encourage lawyers charging contingent fees to sue even where the difference in amounts would be minimal.

Commission Response

TSPs' existing incentives are sufficient. By obtaining right-of-way by agreement, TSPs avoid the time and expense of condemnation litigation and foster good relations with landowners, with whom they will have ongoing relationships.

General Comments – Comments for or against Adoption

Lone Star and Sharyland were for adoption of the rule, with changes. Brazos, E.ON/Iberdrola, ERCOT, ITC, Luminant, Texas Farm Bureau, and TIEC proposed changes to the rule without expressly addressing whether they were for or against its adoption. AEP/ETT, CenterPoint, Cities, CPS Energy, Eurus, Horizon, LCRA, Oncor, STEC, and the Wind Coalition were against adoption of the rule. AEP/ETT, Cities, Joint Commenters, Oncor, STEC, and the Wind Coalition stated that the rule's complex and burdensome processes and financial requirements would delay transmission improvements and add costs that would offset the alleged benefits of a competitive selection process. AEP/ETT stated that the rule would introduce a risk of appeal that could potentially cause undue delay. CenterPoint stated that the legislative intent was to

expedite transmission to wind-rich areas, and any delay caused by a burdensome rule would be counter to that intent. STEC stated that the proposed rule ignores ERCOT nodal protocols. Cities stated that no material advantage in schedule or cost will likely be achieved through the selection of TSPs on a competitive basis but that potential ownership and operating risks will result from such a process. Cities also stated that even if the TSPs are allowed to bid on projects, only the incumbent TSPs should participate, because entrants will lead to duplication of transmission investment and operating costs.

Commission Response

The competitive selection process required by the rule will ensure that the commission develops a transmission plan for delivering electricity from competitive renewable energy zones (CREZs) that is most beneficial and cost-effective to electric customers, as required by PURA §39.904(g). The competitive selection process will provide TSPs with an incentive to minimize costs and provide innovative solutions.

General Comments - Use of Existing ERCOT Process

AEP/ETT, CenterPoint, Joint Commenters, Oncor, and STEC recommended that the rule be withdrawn and that the current ERCOT Power System Planning Charter and Process be applied. AEP/ETT stated that the current system ensures clear ownership and quick response time for stability and security and that a designation method should not be adopted if it adds time relative to the existing ERCOT processes. ERCOT, however, stated that the existing ERCOT processes do not anticipate or accommodate selecting entities that are not currently TSPs. ERCOT stated that if it were assigned TSP selection, it would need new processes and criteria; the commission rather than ERCOT should decide such processes and criteria, and they should be consistent with

requirements already set by the North American Electric Reliability Corporation (NERC), the commission, and the ERCOT Protocols and Operating Guides. Lone Star and TIEC stated that Senate Bill (SB) 20 and the need for new processes to accommodate non-incumbency areas demonstrate that the existing process is not sufficient. Sharyland stated that selecting TSPs according to ERCOT incumbency would unfairly delay development in non-incumbency areas relative to areas where an incumbent exists. Trans-Elect stated that existing ERCOT processes were insufficient to address TSP selection for developing CREZ transmission.

Commission Response

The commission concludes that a new process needs to be used for the selection of Designated TSPs for CREZ Transmission Plan Facilities (CTP Facilities). As pointed out by several commenters, the ERCOT procedures do not contemplate the selection of a TSP to build transmission outside of the footprint of ERCOT TSPs. Also, ERCOT does not have a process to select a TSP for a transmission project when several entities desire to build a project. The commission recognizes that the adoption of the rule and its designation of TSPs under the rule raise the risk of litigation, but the commission believes that companies that have indicated an interest in constructing CREZ transmission facilities but are not operating as TSPs in ERCOT today could challenge the designation of TSPs under the existing ERCOT procedures, through a complaint at the commission. Whether the commission adopts the rule or not, there is a likelihood of challenges to the designation of TSPs for CTP Facilities. The commission concludes that selection criteria based on the capability of the TSPs and the cost and schedule terms they offer for CTP Facilities provide greater benefits for customers and developers of wind projects, and are fairer to the TSPs than a process that relies heavily or exclusively on incumbency as a selection criterion.

General Comments - Alternative Proposals

The Joint Commenters and Horizon proposed that, to save time, TSPs that own both endpoints of a given project should be designated as the default builder; otherwise projects should be joint projects shared by the TSPs owning each endpoint. Sharyland observed that the Joint Commenters' proposal to consider non-incumbent TSP selection in new areas would encourage TSP diversity; Horizon stated that it would allow incumbents to focus on upgrades and thereby shorten the overall CREZ timeline. E.ON/Iberdrola stated that the Joint Commenters' proposal contemplates ordering all construction pursuant to PURA §39.203(e), which would eliminate considerations in PURA §37.056(c)(1)-(3) and (4)(E), but the CREZ statute only states that §37.05(c)(1) and (2) considerations are not necessary. Eliminating considerations in §37.056(c)(3) and (4)(E) would affect rate cases by automatically finding facilities used and useful, prudent and includable, regardless of actual use, and would grant the TSP the ability to employ construction work in progress (CWIP). E.ON/Iberdrola also stated that although the Joint Commenters' "default to incumbent" proposal would work quickly, the CREZ rule contemplates TSP selection after the issuance of the final order in Docket Number 33672. Sharyland stated that although the Joint Commenters' proposal provides a detailed procedure for selection that would expedite the process, the "default to incumbent" aspect should be eliminated.

Commission Response

The commission concludes that CREZ Facilities that involve an upgrade of an existing line generally will be designated to the incumbent TSP that owns the line to be upgraded, because to do otherwise would create coordination difficulties with the operating and

maintenance functions. However, in the adopted rule, the commission has also made explicit that the commission can select a TSP other than the owner of the existing facilities if the owner requests that a different Interested TSP be selected or good cause exists to select another TSP. In cases not involving an upgrade to an existing line, the incumbent TSP will compete with the other Interested TSPs to assure the transmission improvements deliver energy in a manner that is most beneficial and cost-effective to customers.

E.ON/Iberdrola proposed a “slimmed-down” rule that identifies general criteria for what constitutes “most beneficial and cost-effective” when selecting a TSP for a given project. It then identified the specific criteria that various parties had suggested as indicative of “most beneficial and cost-effective” in earlier filings and comments. It stated that, under this alternative rule, the commission would have discretion to weigh the criteria when reviewing proposals. In the event that only one proposal is submitted for a given project, expedited review and approval could be allowed. It stated that there would likely be a tendency for TSPs to seek projects within their existing territories. In areas that lack an incumbent, it would be more likely that multiple proposals would be submitted for a given project. In such event, settlement could be encouraged. Horizon expressed concern that the proposal by E.ON/Iberdrola would result in multiple contested cases and effectively disadvantage the Panhandle area in terms of expediency. CenterPoint stated that if the criteria proposed by E.ON/Iberdrola are adopted, the commission should also consider the corporate structure of the entities providing transmission service and require that entrants comply with the same code of conduct provisions to which incumbent providers adhere. CenterPoint also stated that project-by-project review of specific criteria might not capture inefficiencies in the aggregate and thus fail to realize the “most beneficial and cost-

effective” solution. It also stated that circumstances may dictate that some projects be processed more slowly than others.

Oncor did not support the process presented by E.ON/Iberdrola, because the process would likely be protracted. Oncor proposed certain modifications to the process and criteria proposed by E.ON/Iberdrola in the event the Commissioners elect to adopt that approach. Horizon stated that the rule proposed by E.ON/Iberdrola would further extend the timelines for completing CREZ transmission projects because even if only one TSP applied for a given project it would still be treated as a contested case, and in cases where multiple TSPs are interested, there would be no mechanism for resolving issues early in the process. Horizon advocated an approach where all issues and projects would be addressed in a single contested case, as opposed to creating distinct cases for each project. Lone Star expressed support for the alternative proposal suggested by E.ON/Iberdrola and stated that it might take less time to implement such a rule compared to a settlement proceeding among all the parties.

Commission Response

The commission believes that adopting a rule with specific TSP selection criteria in conjunction with a settlement process will provide for the expeditious completion of the CTP Facilities. As noted above, the commission believes that any approach to selecting TSPs poses litigation risks. Specifying criteria and a process for the selection of Designated TSPs should reduce, rather than increase, this risk. E.ON/Iberdrola presented a four-part recommendation that would streamline the process by moving the pre-qualification into the selection process, allowing the TSP to propose projects directly based on the CREZ Transmission Plan, eliminating the performance-incentive scheme, and providing for the

prompt disposition of uncontested proposals. The commission sees merit in this recommendation and has incorporated these features into the rule.

General Comments - Allow the Parties to Decide Designation in a Settlement

Commission staff outlined four different methods for selecting one or more TSPs to build each designated project. The first method provided that the rule would retain the structure in the proposal for publication, where TSPs would need to be pre-qualified generally to build transmission lines prior to expressing interest in a specific project. The second method provided that TSPs would be selected through a settlement conference as proposed by certain parties, and as more fully described herein. The third method provided that the rule would be streamlined to combine the qualification and selection stages, and uncontested proposals for a given project would be considered by the commission on an expedited basis, whereas a TSP would be selected for projects with multiple proposals in a contested case. The fourth method provided a settlement conference but also provided that the rulemaking process would continue simultaneously in case the settlement talks failed to provide a complete solution.

AEP/ETT and Horizon recommended that a collaborative settlement process be initiated in Docket Number 33672 once the transmission plan is adopted, and that such settlement be subject to commission approval. The Joint Commenters recommended that transmission designation be determined through a settlement process, and stated that the commission could resolve any disputes that were not resolved in the settlement discussions. Luminant, Oncor, and the Wind Coalition stated that settlement should be encouraged as a means for expediting the qualification and designation process. Sharyland stated that the commission should encourage a settlement process while still moving forward with the rule adoption process. In addition, it stated that the

settlement process should begin promptly, rather than waiting until the specific projects are defined. Third, Sharyland stated that mutual agreement is best and that there are enough projects for all interested and qualified TSPs to build something. Finally, it supported initiating a settlement process in Docket Number 33672, but noted that it would not object to opening a separate proceeding for this purpose, on the condition that it would not delay the settlement process.

TIEC stated that settlement and collaboration should be guided by standards that direct the discussions towards a low-cost solution. Lone Star stated that deferring the selection process to the incumbents would abrogate the commission's responsibility to create a transmission plan and regulate ERCOT transmission concerns, and would raise antitrust concerns. CenterPoint stated that joint projects might require coordination during the project submission process that could raise antitrust concerns. E.ON/Iberdrola discussed antitrust issues and the potential for antitrust concerns under different procedural approaches.

AEP/ETT; Babcock & Brown Renewable Holdings, Inc.; CenterPoint; CPS Energy; Duke Energy Generation Services, Inc.; E.ON/Iberdrola; Eurus; Horizon; LCRA; Mesa Power, LLC; Iberdrola Renewables, Inc.; RES America Developments, Inc.; Sharyland; Shell Wind Energy Inc.; STEC; Texas-New Mexico Power Company; and the Wind Coalition jointly stated that a settlement conference could provide an efficient and effective mechanism for prompt and cost-effective construction of the contemplated transmission lines, and suggested that the commission order that such settlement conference be held in Docket Number 33672. Horizon stated that the proposed settlement discussions would be inclusive of all parties and would expand upon the existing ERCOT process. CenterPoint and Oncor also supported the initiation of a settlement

process. Oncor stated that the settlement process should be collaborative, open, non-discriminatory, and non-biased. Trans-Elect advocated an inclusive settlement process and stated that such process should be conducted in this proceeding or in a new docket, rather than in Docket Number 33672.

Lone Star stated that it did not oppose settlement discussions, but stated that the discussions should take place in a proceeding other than Docket Number 33672. Lone Star stated that the CREZ rule and the commission's interim order in the CREZ case both state that the commission will select TSPs after adoption of the final order, and expressed concern about how the proposal to hold settlement talks would function in light of that procedure. It also expressed concern that settlement talks might exclude or marginalize certain parties, specifically entrants. It emphasized the need for focus on the "most beneficial and cost-effective" standard for TSP selection even in the context of a settlement among the parties. Sharyland suggested that a mediator be appointed for the settlement process, such as a senior PUC official, staff official, or possibly an administrative law judge from the State Office of Administrative Hearings. It also stated that in the event of settlement, it would remain the commission's responsibility to make any final decisions such as whether or not to approve the proposed settlement as in the public interest and in compliance with the relevant statute. Sharyland also discussed what might occur if the settlement was rejected by the commission or was non-unanimous, and stated that in such event, it would remain more expedient than the process described in the proposed rule.

Commission Response

A settlement process has the potential to expedite the selection of TSPs. As a result on March 18, 2008 the commission separately ordered the commission staff to conduct

settlement negotiations concerning TSP selection. The settlement negotiations are open to all interested parties. In addition, the commission has changed the rule to provide that if a CTP Proposal is supported or unopposed by all parties in the selection proceeding by the deadline to file the CTP Proposal in the selection proceeding, the Interested TSP making the CTP Proposal is not required to file most of the supporting information required by the rule. In that case, the commission expects that Staff and other parties during settlement negotiations will have obtained and reviewed information necessary to determine which TSP to select for particular CTP facilities. The settling parties would be free to submit what information they determined was appropriate to support the settlement. Nevertheless, the rule is still an appropriate means for the commission to resolve disputed issues and judge disputed and undisputed CTP Proposals.

General Comments – Qualification Process

AEP/ETT and Lone Star stated that the qualification process in the rule would cause unnecessary delay and would not bar many parties. CenterPoint, E.ON/Iberdrola, and Sharyland requested that the pre-qualification process be dropped in favor of establishing threshold requirements and considering qualifications more thoroughly in the context of specific proposals. LCRA recommended that proof of qualification be established by identifying dockets where the entity was previously granted a certificate of convenience and necessity (CCN). However, Lone Star and TIEC stated that qualification requirements should apply to all interested parties, because a CCN for a small transmission line does not establish qualification to build a relatively large line. ITC and Lone Star recommended that if the qualification process is kept, it be limited to criteria that can be verified without a contested case. In contrast, TIEC stated that the qualification process should not be self-implementing and qualifications should be thoroughly vetted.

Luminant and STEC stated that parties should be able to challenge in a contested case a finding that a TSP is not qualified. Lone Star stated that it is important that entities meet qualification requirements even after the facilities are in service.

Commission Response

The commission has changed the rule to eliminate the separate qualification process, so that qualifications are instead considered in the process for selection of Designated TSPs. This change will reduce the time necessary to select designated TSPs, but still allow for appropriate evaluation of Interested TSPs' qualifications.

General Comments – Competition

Cities and STEC stated that the legislature established transmission as a regulated monopoly not subject to competition, pursuant to PURA §11.002. Lone Star in contrast stated that although transmission service is monopolized, selection of who gets to provide such service is not. CenterPoint stated that the commission lacks legal authority to adopt a competitive process for the provision of transmission service, pursuant to PURA §§11.002(b), 31.001(b), and 39.001(a). It also stated that PURA §39.904(j) supports transmission remaining a regulated service and §39.007 requires a tariff while §32.101 reflects that tariff requirements are regulatory in nature. STEC stated that the rule is not a competition rule subject to judicial review under §39.001(e), while Lone Star stated that it is a competition rule because it was adopted pursuant to Chapter 39 of PURA. LCRA stated that an untried and unproven competitive selection process could delay implementation and be less effective in practice. ITC stated that ratepayers will save billions over the useful life of the CREZ lines; the benefits from fast implementation outweigh smaller gains that might be achieved through an elaborate competitive process. The Wind Coalition

emphasized the importance of wind energy and state that expediency outweighed the potential advantage of developing new models for transmission service provider selection.

AEP/ETT, Cities, and Sharyland stated that most costs are already competitively bid or are fixed costs. Cities stated that transmission cost of service is only 10% of the total electricity cost for retail customers, and competitive selection of TSPs would produce small benefits. Cities suggested mandating competitive bidding wherever feasible and requiring documentation to support decisions not to bid competitively. CenterPoint and ITC recommended that competitive bidding not be mandatory.

Commission Response

The commission has the authority to use a competitive selection process for CTP Facilities. PURA §39.904(g) requires that the commission develop a plan to construct transmission facilities needed to serve CREZs. PURA does not specify how the commission is to select the TSPs for CREZ transmission facilities, but PURA §39.904(g) does contain the objective that the transmission facilities be constructed in a manner that is most beneficial and cost-effective to customers. The commission has concluded that a competitive selection process best meets this objective, because it will provide TSPs with an incentive to minimize costs and provide innovative solutions. Concerning the time needed to select TSPs, it is not clear that a different selection process would take less time, in light of the interest expressed by various existing and potential TSPs in CTP Facilities. A settlement process has the potential to expedite the selection of TSPs. As a result, the commission has separately ordered the commission staff to conduct settlement negotiations concerning TSP selection.

This rule is a competition rule subject to judicial review under PURA §39.001(e) and (f), because the provision of transmission service to CREZs is a concept created by the legislature in PURA Chapter 39 and is directly tied to the competitive provision of renewable electricity. The judicial review process pursuant to PURA §39.001(e) and (f) for a competition rule greatly reduces the time to challenge the validity of the rule. As a result, it provides the competitive market certainty, which reduces risk associated with expenditures based on the competition rule. Such certainty for the current rule is very beneficial because of the very large amounts of time and money that will be spent for the CREZ transmission facilities and the wind generation facilities that will locate in the CREZs.

General Comments – Entrants

Cities stated that entrants would duplicate investment and operating costs, which would offset any savings. TIEC stated that it is a mistake to place existing TSPs on the same level as newcomers. STEC stated that “Interested” TSPs should not include entities that do not currently hold a CCN, because the grant of a CCN to an entity that merely “commits” to becoming a utility could be challenged in court and delay implementation. Luminant stated that excluding interested parties from the selection process would invite appeal; Lone Star stated that such exclusion would contradict the commission’s preliminary order in Docket Number 34362.

Commission Response

Nothing in PURA prevents selection of an entrant to construct, own, operate, and maintain CTP Facilities if the entrant is adequately qualified and offers the best proposal. The rule contains provisions to ensure that the qualifications of both existing TSPs and entrants are

thoroughly evaluated in deciding who to select. The commission believes that entrants in the transmission service market and competition among potential TSPs will result in the delivery of electric output from CREZs in a manner that is the most beneficial and cost-effective to customers.

CenterPoint also stated that the Panhandle area may develop problems if incumbency areas are not established so that it is difficult to ascertain who owns a given line, and because if multiple TSPs serve an area, it would require redundant overhead such as warehouses, district offices, and control centers.

Commission Response

The commission believes that the overhead factors cited by CenterPoint are not as important, in assessing the costs and benefits of a CTP Proposal, as the potential for capital cost savings and expedited completion of projects that may be provided through competition among TSPs.

STEC stated that the commission staff is much reduced in number lately, and expressed concern that if all areas proceed at the same pace and CCNs are thereby not staggered, landowners will be “run over totally” and more litigation would result. E.ON/Iberdrola stated that although it did not support a process that would artificially disadvantage a group or area from timely development, not all CCNs could proceed simultaneously. Horizon stated that although it sought an expedited process, it did not support meeting that goal to the extent that you “run over” landowners, and spoke to its positive track record in working with landowners. The Wind

Coalition emphasized the need for equal treatment, but stated that “equal” treatment does not necessarily mean simultaneous, lock-step processing of all CCN projects.

Commission Response

Because of the large amount of transmission facilities that will be included in the CREZ Transmission Plan and the potentially large number of resulting CCN applications, subsection (g)(1) makes clear that the commission has flexibility in establishing a schedule for the filing of CCN applications and retains the flexibility to address scheduling issues as they arise.

General Comments - Use of Historically Underutilized Businesses

Senator Royce West cited PURA §12.252 and recommended that the rule include a requirement that Interested TSPs include specific information in their CTP Proposals about efforts they intend to make to utilize historically underutilized businesses (HUBs). In addition, Senator West recommended that the rule require a subcontracting plan consistent with Texas Government Code §2161.252 and that the commission consider the information in the plan in selecting Designated TSPs.

Commission Response

Pursuant to PURA §§12.251-12.555, the commission has changed the rule to require information concerning HUB use and the consideration of HUB use in selection of Designated TSPs other than for electric cooperatives and municipally owned utilities. Although not required, electric cooperative and municipally owned utilities may provide information concerning HUB use.

Subsection (a)

ITC stated that the commission should make it clear in subsections (a) and (b) that the rule applies only to CREZ transmission improvements synchronously interconnected within the ERCOT reliability region.

Commission Response

At this time, the commission does not find justification to warrant the limitation suggested. The commission has decided in its interim decision in Docket Number 33672 that the transmission plan for the initial CREZs will deliver power to ERCOT, but it may be appropriate in the future to use this rule to select Designated TSPs for CTP Facilities that are designed to deliver power outside of ERCOT.

Lone Star sought clarification because the rule expressly applies only to a TSP “that intends to submit an application” but also governs TSP and commission activities occurring after the filing of an application. Also, this subsection applies only to TSPs, not to entities such as Lone Star that has not yet qualified as a TSP.

Commission Response

The commission agrees, and has amended the subsection accordingly.

Subsection (b)

CenterPoint and Lone Star recommended clarification of this subsection by noting that the rule not only governs the selection of TSPs but also these TSPs’ performance, rates, and CCNs.

Commission Response

The commission has added a reference to performance, because subsection (f) addresses that topic.

LCRA stated that the commission should have the flexibility to establish three different methods of selecting Designated TSPs.

Commission Response

The commission has included in the rule methods of selecting TSPs that it has concluded are most appropriate, and finds no need to make any additional changes.

Subsection (c)

Oncor stated that the reference to a “new substation” should be deleted from the “CTP Facility” definition in subsection (c)(2) and that an entity responsible for constructing an isolated substation should not be required to complete all of the requirements of the rule in order to construct the substation. LCRA stated that the definition of “Facility” should include circuit or terminal equipment to avoid confusion about who the facility owner is.

Commission Response

If a substation is a CTP Facility, it should be subject to the rule. An isolated substation can be included in a CTP Proposal that includes other CTP Facilities as well. As a result, applying the requirement to an “isolated” substation is not burdensome, and applying the rule to all CTP Facilities ensures that all facilities necessary to serve CREZs will be

addressed in a timely and cost-effective manner. The commission has therefore changed the rule accordingly. The commission makes no change in response to LCRA’s comment, because the commission has defined CTP Facility in general terms, and adding the specificities that LCRA seeks would not appear to avoid ownership confusion.

Subsection (c)(4)

LCRA recommended that the definition of “Designated TSP” in subsection (c)(4) be amended by changing the term “ordered” to read “designated.” This change would incorporate upgraded facilities and those directly designated by the commission.

Commission Response

The commission agrees that the use of the term “designated” is appropriate and has changed the rule accordingly, but notes that upgraded facilities may be designated by the commission as CTP Facilities.

Subsection (c)(5)

ITC stated that the definition of “Interested TSP” needs more clarity so that it is understood that a CCN is not required to participate in transmission planning or to be selected to build transmission. Lone Star stated that the commission should modify the definition or otherwise provide that once a non-utility entity has obtained a CCN, it will be a TSP under P.U.C. SUBST. R. 25.5(143). TIEC recommended a rulemaking to determine how an entity becomes a TSP prior to allowing competition on the level contemplated.

Commission Response

The commission does not agree with the suggested changes. Non-TSPs already participate in transmission planning and the rule is clear that entities not currently TSPs can be selected for CTP Facilities. An entity must own or operate a transmission facility to be a TSP under P.U.C. SUBST. R. 25.5(143). A separate rulemaking is unnecessary, because the rule addresses how an entity that is not currently a TSP can be selected for CTP Facilities.

STEC stated that the commitment provision should be eliminated because an entity may get the project but be challenged in court when applying for a CCN, resulting in delays. Lone Star and TIEC stated that the commitment process needs to be defined. Lone Star proposed that a non-utility simply execute a brief declaration by a corporate officer or similar representative that if designated to build, own, or operate CTP Facilities, it will comply with all laws and commission rules applicable to TSPs. Alternatively, the commission may wish to resolve this “commitment” conundrum by adding the following sentence to the end of the definition: “Such commitment may be demonstrated by satisfying the requirements of subsection (e).”

Commission Response

The commission agrees that the commitment needs clarification and has added in subsection (e) the requirement that an affidavit by an officer of the Interested TSP must be provided. The affidavit affirms the truthfulness of the application and provides reasonable assurance that the Interested TSP will comply with all applicable rules of the commission.

Subsection (d)

Oncor stated that subsection titles “Selection process” and “Selection of Designated TSP” should be combined.

Commission Response

The commission concludes that these two sections are needed for clarification of what is required. The “Selection process” in subsection (d) defines the steps that will be taken in the selection of the TSP. The “Selection of the Designated TSP” in subsection (f) defines the required information and identifies the criteria that will be used to select each designated TSP.

CenterPoint, E.ON/Iberdrola, Oncor, and Sharyland stated that the selection process should be modified to omit the pre-qualification stage in favor of evaluating a TSP’s qualifications in conjunction with its proposal to construct specific CREZ facilities. Lone Star stated that the qualification stage should be deleted altogether because it adds more time and little value to the overall evaluation of CTP Proposals. Oncor stated that the pre-qualifying of entities will add both additional administrative expenses and delay.

Commission Response

The commission agrees that the two phases would unnecessarily add time to the selection process, and has therefore combined the qualification phase into the selection phase.

ITC stated that the rule should specify the following objective “safe harbor” minimum criteria that automatically qualify a TSP if met: (1) current holders of Texas CCNs as transmission

utilities; (2) those who themselves, or whose affiliates, already operate as electric utilities in other states; and (3) those without a Texas CCN or electric utility operations elsewhere who themselves or their parent have \$120,000,000 in owners' equity on the most recent audited financial statements. Sharyland recommended that if the prequalification phase remains in the rule, it should apply only to entities that do not currently hold a CCN in Texas.

Commission Response

The commission agrees that a utility already operating transmission facilities in Texas has adequate financial resources to qualify to submit a CTP Proposal, and has changed the rule accordingly. On the other hand, holding a Texas CCN without operating transmission facilities in Texas or operating as an electric utility outside of Texas does not necessarily provide evidence of these resources. However, the commission has changed the rule to permit an Interested TSP to provide evidence satisfactory to the commission that it has adequate financial resources, which will permit non-traditional entities that may have non-traditional but adequate methods of financing to make a CTP Proposal.

Lone Star, Luminant, Oncor, STEC, and Trans-Elect recommended further clarification of how a TSP qualifies. Lone Star stated that the rule does not set forth the criteria the commission will use to limit the size or type of CTP Facilities for which a Qualified TSP may submit a CTP Proposal and the criteria by which the commission will evaluate the information submitted in a Qualified TSP application. Oncor recommended that in subsection (d)(1) and (4) the phrase "other relevant information" should be clarified with specific information or examples of the types of information that is relevant. Trans-Elect also encouraged the commission to set forth the criteria for CREZ TSP selection.

Trans-Elect stated that TSPs actively serving transmission customers either inside or outside of ERCOT should only need to make a cursory showing of their technical, operational, managerial, and construction expertise, and all parties should be required to make the same showing of financial capabilities. Luminant and STEC recommended that the process to designate a TSP as a qualified TSP be clarified as whether it should be done in a contested case or otherwise.

Commission Response

Subsection (e) of the adopted rule lists the minimum factors that the commission will consider in selecting an entity for a CTP Facility. However, the factors are not exclusive, because the commission and parties to the selection proceedings should have flexibility to consider all relevant factors, especially because the rule creates a new selection process. Nevertheless, the overall objective of the selection process is prescribed by PURA and referred to in the rule: to deliver electricity from the CREZs in a manner that is most beneficial and cost-effective to customers. The type of proceeding that will be used for selection can be addressed in the proceeding itself.

Subsection (d)(2)

E.ON/Iberdrola stated that TSPs should be allowed to propose specific projects instead of requiring the commission to undertake such a compilation.

Commission Response

The rule permits entities to propose specific projects.

Subsection (d)(3)

CenterPoint stated that this subsection should be relocated to subsection (d) “Designation of CTP Projects” to alter the timing of the proposed process so that the commission would designate the CTP projects prior to TSPs being required to select projects that are of interest to the TSP.

Commission Response

The commission agrees that the CTP Facilities should be identified before Interested TSPs are required to submit CTP Proposals. The commission will identify the CTP Facilities in the CREZ docket before Interested TSPs are required to submit CTP Proposals.

LCRA stated that the separation of a CTP Project into distinct CTP Facilities would result in the filing of multiple CCN applications for each facility within a project and would result in increased costs for Interested TSPs and further strain the commission’s resources. STEC recommended that only one CCN application be required for a particular CTP project even if it means a joint application in order to more effectively utilized staff resources and to have one in-service date for a joint project.

Commission Response

The rule provides flexibility for the commission to identify the scope of CCN applications in the selection proceedings. Also, the commission may choose in those proceedings to give the Designated TSPs discretion in determining which CTP Facilities to include in particular CCN applications.

Sharyland stated that the selection process should incorporate a specific requirement that the parties participate in a mandatory settlement conference at an early stage of the proceeding. If agreement is not reached or a non-unanimous settlement is reached and a contested proceeding is necessary, the commission should utilize expedited procedures including a hearing before the commission.

Commission Response

The rule provides flexibility for the commission to process the selection proceedings in the most appropriate way given whatever issues actually arise in those proceedings, and targets decisions within 180 days of the filing of the CTP Proposals.

Subsection (d)(4)

E.ON/Iberdrola stated that uncontested CREZ designation proposals should receive prompt disposition and settlement discussions should be encouraged in contested cases.

Commission Response

The rule permits prompt disposition of uncontested CTP Proposals and the encouragement of settlement discussions.

CenterPoint recommended that in authorizing Qualified TSPs to construct, operate, and maintain a CTP Facility, the commission should not split the project after cost estimates have been made, because doing so would render the initial estimates invalid. Also, a divided project would cause coordination problems.

Commission Response

The commission can address these issues in the selection proceedings.

TIEC stated that the rule should have objective criteria to distinguish between providers in order to make the final selection. Also, TIEC stated that the rule should indicate that the lowest-cost option among competing TSPs would be selected.

Commission Response

As stated previously, subsection (e) of the adopted rule lists the minimum factors that the commission will consider in selecting an entity for a CTP Facility. However, the factors are not exclusive, because the commission and parties to the selection proceedings should have flexibility to consider all relevant factors, especially because the rule creates a new selection process. Nevertheless, the overall objective of the selection process is prescribed by PURA and referred to in the rule: to deliver electricity from the CREZs in a manner that is most beneficial and cost-effective to customers.

Subsection (e)

LCRA and Oncor stated that qualification standards should apply only to entrants into the TSP market who do not own and operate transmission facilities in Texas.

Commission Response

As previously stated, the commission has changed the rule to eliminate the separate qualification process, so that qualifications are instead considered in the process for selection of Designated TSPs. Also as previously stated, the commission agrees that a

transmission utility already operating in Texas has adequate financial resources to qualify to submit a CTP Proposal, and has changed the rule accordingly.

Lone Star stated that the rule did not make clear that meeting the standards set forth in subsections (e)(1)-(4) will satisfy an Interested TSP's burden of proof and whether these standards are a uniform minimum for all Interested TSPs or whether the standards vary based on the type of CTP Facilities.

Commission Response

As previously stated, subsection (e) of the adopted rule lists the minimum factors that the commission will consider in selecting an entity for a CTP Facility. However, the factors are not exclusive, because the commission and parties to the selection proceedings should have flexibility to consider all relevant factors, especially because the rule creates a new selection process.

Lone Star questioned why the Designated TSP only needed to meet the qualification requirements until the date it places facilities in service. Lone Star stated that the rule should require a "Qualified TSP" to continue to meet these requirements and that it may lose its qualified status if it does not continue to meet the requirements. Also, it is unclear why an "Interested TSP" would need to continue to meet the requirements to the extent that it does not become Qualified.

Commission Response

The commission believes that the qualification requirements should apply during selection of a Designated TSP, preparation of a CCN application, and construction of the CTP Facility. The rule has been changed accordingly.

Subsection (e)(1)

Lone Star sought clarification for the requirement that every Qualified TSP must establish the financial requirement expected of a Designated TSP for a specific CTP Facility, which has not been identified at the qualifying stage. The commission should only require an Interested TSP to demonstrate that it possesses some minimum level of financial resources.

Commission Response

The commission agrees and has eliminated the qualification stage, so that the Interested TSP will know the CTP Facilities for which it may submit a CTP Proposal. The financial requirements allow for several ways to qualify and for innovative methods of financing CTP Proposals.

Subsection (e)(2)

ERCOT and Lone Star proposed changes to the demonstration of technical and managerial resources to manage the projects. ERCOT encouraged the commission to take into consideration the full range of TSP obligations under the ERCOT Protocols and Operating Guide, TSP-ERCOT Standard Form Agreement, and ERCOT's Transmission Planning Charter. Lone Star stated that the requirement for an Interested TSP to show that it can comply with "all scheduling and operating requirements for the transmission system," if read literally, imposes an excessive

burden. The rule should instead require that an Interested TSP must establish that it can comply with all operating requirements for facilities under its control.

Commission Response

The commission agrees and has made changes accordingly.

LCRA and Lone Star had recommendations concerning management experience. LCRA stated that the capability to manage projects should be limited to the executive in charge and his or her direct reports, where the Interested TSP has provided continuous and reliable transmission service in ERCOT. Lone Star stated that the rule should allow entities that meet a threshold to apply to build any CTP Facility. The determination of sufficient experience to build any particular facility would be determined when the commission evaluates the applications.

Commission Response

The rule does not require any particular experience to be selected, but does require that an Interested TSP provide resumes for key management personnel that will be involved in obtaining a transmission CCN and constructing, operating, and maintaining each CTP Facility.

Subsection (e)(3)

CenterPoint, ITC, LCRA, Lone Star, and Oncor proposed clarifications on information about business practices. CenterPoint stated information should be required for only those Interested TSPs that have not provided transmission service in Texas for a minimum of the past 10 years. LCRA and Oncor stated that the complaint history should be limited to the entity's complaint

history related to the construction and operation of transmission facilities and the provision of transmission and transmission-related services. For an entrant that does not have a track record providing transmission services in Texas, LCRA stated that information about non-transmission operations and services might be relevant. Lone Star stated that there was a need for a clarification between this subsection that applies to “CTP Facilities” and the previous subsection where the requirement applies to “relevant CTP Facilities.” Lone Star stated that the history information involving transmission operations should be on a “normalized” basis, such as complaints per 1,000 customers. Oncor and Lone Star questioned what is meant by an entity’s “compliance record” and the term “principals,” respectively. ITC recommended clarification of the standard and how it should be satisfied so it is not so ambiguous.

Commission Response

The adopted rule requires a summary of law violations by the Interested TSP found by federal regulatory agencies, state public utility commissions, attorneys general, or other regulatory agencies for the current calendar year and the previous five calendar years. For an entrant, it is difficult to write a rule that obtains relevant information about law violations of its owners and affiliates without being overly broad. The commission expects that parties in the selection proceeding will obtain relevant information about law violations of entrants through public sources and discovery, without overly burdensome discovery requests.

Subsection (e)(4)

Lone Star recommended that the commission require an officer or director or similar managerial figure to submit the required affidavit.

Commission Response

The commission has changed the rule to require that the affidavit be submitted by an officer of the Interested TSP.

Subsection (f)

Lone Star stated that comparing proposals using the cost of construction is not a practical basis for differentiating among TSPs because most of the TSPs will be using the same contractors for these projects, so cost differentiations will be very small. Oncor stated that the rule places too much reliance on the credibility of cost estimates too early in the process. Sharyland stated that Return on Equity (ROE) is a more acceptable and effective way to compare proposals, and ITC suggested a holistic life-cycle evaluation verses a low bid cost selection process.

Commission Response

The commission concludes that comparing the costs of representative structures for a particular conductor size will provide a meaningful measure of the differences among TSPs that seek to construct a CTP Facility. The cost and type of structures and conductors, proposed financing costs, and the overhead for managing the projects are key factors to consider in selecting TSPs for the CTP Facilities. However, the commission recognizes that it must consider the subjectivity of the estimates.

Subsection (f)(1)

ITC stated that there is no indication of how long a Qualified TSP may have to study the CTP Facilities before submitting the required information. This information would depend upon the exact location of the line, which is not known at this time.

Commission Response

The commission will establish deadlines for submission of CTP Proposals in the selection proceedings. There are competing interests with regard to the time for submitting CTP Proposals: the commission's interest in completing the CREZ Facilities as quickly as possible and the need to allow TSPs adequate time to prepare clear, coherent CTP Proposals.

LCRA stated that it is premature to require information about the proposed structure types because this information is not determined until after more information is obtained about the project.

Commission Response

The commission disagrees but recognizes that changes may occur as the Designated TSP conducts more detailed analyses.

CenterPoint and LCRA stated that the dates for project phases and the in-service date are hard to predict and the intermediary dates are irrelevant.

Commission Response

The commission has eliminated the intermediary dates, because they are not necessarily a realistic predictor of when a project will be completed. However, providing an in-service date appropriately puts the Interested TSP through the process of adequately evaluating construction of each CTP Facility.

LCRA sought clarification of whether estimated costs include indirect costs and whether all cost estimates should be in current year dollars or future year dollars.

Commission Response

The costs should only be direct costs in current dollars.

Sharyland stated that there is no need for TSPs to develop their own cost estimates, especially in light of the fact that all TSPs will utilize substantially the same contractors to construct the facilities and will incur similar construction costs. The only information that the commission should require is (a) the TSP's financing plan; (b) the TSP's cost of capital; (c) how the TSP plans to manage the construction and operation of the facilities; and (d) the TSP's proposed schedule for the project.

Commission Response

The commission disagrees. Interested TSPs will have different approaches and costs, and may have vendor relationships that could potentially lower costs.

Oncor stated that the rule should be modified to clarify that the reference to structures should apply to “representative” structures and not “every” structure, and stated that this subparagraph should be consistent with what is requested in any incentive plan in the rule.

Commission Response

The adopted rule requires a general description of the proposed structure types for each CTP Facility transmission line, which addresses Oncor’s comment.

CenterPoint and LCRA stated that any reference to actual operating and maintenance cost be deleted because of the considerable variability of these among utilities, and LCRA suggested that a prospective cost may be more reasonable.

Commission Response

The commission concludes that having TSPs provide both actual operating and maintenance costs, if available, and an estimate of the cost of operating and maintaining the CTP Facilities will facilitate the selection of TSPs.

LCRA stated in reference to resumes for all executives, managerial, and supervisory personnel that resumes only be filed for TSP’s executive in charge and his direct reports.

Commission Response

The adopted rule requires that an Interested TSP provide resumes for key management personnel that will be involved in obtaining a transmission CCN and constructing,

operating, and maintaining each CTP Facility. The commission agrees that it is not necessary to have resumes for all management.

Oncor stated that the phrase “preexisting procedures” may not capture each entity’s relevant experience and expertise, and the phrase “and historic practices” should be added.

Commission Response

The commission agrees that “preexisting procedures” may not capture the complete range of possibilities and has added the phrase “and historical practices” to subsection (e).

Subsection (f)(1)(K)

Oncor stated that the requirement to identify and quantify “all available capital resources” seems unnecessary for TSPs in general as long as an entity can show that sufficient resources are available, and unnecessary for Oncor in particular as it has successfully certificated and constructed large transmission projects in the past. Also, Oncor also stated that much of the information in clause (ii) would be confidential and highly sensitive information, resulting in an increased administrative burden.

CenterPoint stated that, in general, the demonstration of financial capability should be limited to those projects in which the TSP is interested in participating. CenterPoint also recommended that the requirement for the TSP only identify capital resources that it “expects” to be available and to delete the second requirement for the TSP to identify and quantify the financial impact on the “value, credit rating, and liquidity position” of the company. CenterPoint stated that lending institutions will not irrevocably commit the necessary funds to such projects where important

elements of the projects are unknown or uncertain. Therefore, the TSP can only anticipate what will be available. CenterPoint also requested that the second provision related to financial plans be deleted. CenterPoint stated that the information requested can be reasonably determined from the information that will be provided in response to subsection (f)(2); therefore, the requirement in subsection (f)(1)(K)(ii) is unnecessary. In addition, CenterPoint stated that strict compliance with elements of the rule would be impossible because value must be determined by the financial market and no one can say with a degree of certainty how the financial market will value something in the future. If this part of the rule is not deleted, CenterPoint requested that any projections be strictly limited to the cash flows of the project.

Sharyland stated that the appropriate basis for distinguishing between various TSPs is to use the cost of capital that a TSP is willing to accept to construct a project, and the other financial standards of the rule should not be utilized. Sharyland stated that this would open up the selection process to the broadest range of proposals.

LCRA stated that a singular cost of capital and ROE criterion advocated by Sharyland is overly restrictive and confining and this could deny the commission flexibility in selecting TSPs. Similarly, E.ON/Iberdrola, Oncor, and the Texas Farm Bureau stated that the rule should avoid making the TSP's proposed return the sole or principal basis for designation.

ITC stated that the proper analysis should be based on a holistic "life-cycle" analysis in which offsetting savings may make up for a higher ROE and that focusing solely on ROE would lead to gaming of the process, in which the winning TSP would try to gain back the "missing" ROE it had sacrificed by inflating rate base or operations and maintenance expenses.

AEP/ETT stated that the commission should consider the approval of rate of return adders for use of advanced technology that lowers costs or improves service.

Lone Star stated its support for the financial plan requirement to ensure that a TSP has the appropriate financial resources.

Commission Response

The commission agrees with Oncor that the required financial information should not be overly broad and place undue burdens on an Interested TSP. On the other hand, the required information should be sufficient to demonstrate that an Interested TSP has the capability to finance its CTP Proposal while not having adverse impacts on its credit profiles or financial position. Moreover, the commission believes the rule should expressly state that the commission will evaluate the terms of a TSP's financial plan such as fixed versus floating rate financing and the short-term and long-term maturities of the proposed financing instruments, along with a TSP's willingness and ability to implement the plan over a long term time horizon. Accordingly, the commission has replaced the language of proposed subparagraph (K) with Oncor's suggested language in the context of a TSP's financial plan, and added language that identifies the commission's objective of evaluating the financing terms that will be a component of a financial plan.

The commission disagrees with CenterPoint that the language concerning the financial plan should identify capital resources that are anticipated to be available, in contrast to just being available. The commission appreciates that financial plans can be subject to

change and that plan uncertainties will vary among Interested TSPs, but it does not believe there is a need to explicitly limit the demonstration of capital resources to anticipated resources. The commission further disagrees with CenterPoint that clause (ii) of proposed subparagraph (K) should be deleted because the information can be determined from information provided in proposed subsection (f)(2). Proposed subsection (f)(2) was established for Interested TSPs to demonstrate that their current financial profiles qualify them for selection to build CTP Facilities using historical metrics, or that they possess an investment grade credit rating based on historical operations. However, the metrics, in all likelihood, would have less predictive efficacy in the context of implementing large construction projects in the CREZ Transmission Plan. Therefore, the financial information required by clause (ii) of proposed subparagraph (K) complements and updates the information required by proposed subsection (f)(2) in the context of CTP Proposals. The commission agrees with CenterPoint that the use of the term “value” in proposed subparagraph (K) clause (ii) is ambiguous and has deleted it.

The commission believes that the selection of a TSP should rest on a number of relevant factors. The commission agrees with E.ON/Iberdrola, ITC, LCRA, and the Texas Farm Bureau that cost of capital should not be the sole criterion in selecting TSPs and has therefore not made Sharyland’s proposed changes.

Concerning AEP/ETT’s comments, the commission will consider the proposed use of advanced technology that lowers costs or improves service as part of the selection process.

Subsection (f)(2)

Sharyland stated that the requirements that TSPs must maintain an investment grade credit rating and meet specific minimum equity requirements are unnecessary, unduly restrictive, and should be eliminated. Sharyland stated that as drafted, the financial criteria assume that CTP Facilities will be financed by publicly-held companies through traditional utility financing vehicles which in effect limits the universe of TSPs eligible to participate in the selection process to large, investor-owned utilities and would exclude entities that are organized differently, may not have credit ratings, or would finance transmission with capital from sources not generally used by publicly held utilities. Sharyland stated that the commission should not preclude itself from considering proposals from Interested TSPs that can demonstrate alternative methods for financing transmission investment, especially for entities that already hold CCNs in Texas and have successfully constructed major transmission projects in the past. As an alternative to the detailed financial criteria set forth in the proposed rule, Sharyland recommended that the rule simply provide that TSPs submitting proposals to construct CREZ projects must demonstrate that they have the capability to finance the facilities that they seek to construct and provide detailed descriptions of their financing plans, as set forth in proposed subsection (f)(1)(K).

Sharyland further stated that the absence of a credit rating does not indicate a lack of financial capability to fund major transmission projects. Sharyland also stated that the commission should encourage proposals from a wide variety of entities, including those that propose financing arrangements that differ from conventional publicly held utility financing methods, in order to assure that the commission has chosen the most cost-effective transmission solution. In addition, Sharyland stated that opening the selection process to other types of financing proposals offers the potential for a lower cost of capital to electric customers.

STEC stated that the financial requirements for a Qualified TSP unreasonably discriminate against electric cooperatives. Regarding the financial metrics delineated in the proposed rule such as the required minimum amount of tangible assets in excess of liabilities, STEC stated that electric cooperatives are non-profit organizations (subject to state and federal regulations) that return any profit they make to their members and the commission has never allowed cooperatives a return sufficient to support a business that meets the financial criteria of the proposed rule. Therefore, STEC stated that cooperatives should be exempt from these requirements so long as they maintain an investment grade rating.

Lone Star stated that the commission should adopt high standards for the selection of TSPs, and it should reject Oncor's suggestion that a mere investment grade credit rating should meet all financial resource requirements.

CenterPoint stated that the commission should change proposed subsection (f)(2)(A)(i) to make it clear that the definition of tangible assets includes regulatory assets created through the regulatory process. CenterPoint also stated that proposed subsection (f)(2)(A)(ii) should be changed to adjust the minimum financial ratios by excluding the non-recourse transition bonds of subsidiaries, issued pursuant to financing orders of the commission, because the most recently available financial statements of a TSP would likely include those of its consolidated subsidiaries. CenterPoint identified a typographical error in proposed subsection (f)(2)(A)(ii)(b). The proposed rule references "funds from operations-to-total debt of 10x." The ratio should be 10%. CenterPoint further stated that the requirement contained in proposed subsection (f)(2)(B) should be deleted. That is, the term "secure" is not defined and lacks specificity on the standard

that must be met in order to comply with the provision. CenterPoint stated that if the subparagraph is not deleted, TSPs should not be limited to the options listed in the proposed rule because TSPs might have the opportunity to implement other financing methods that could lower costs.

Lone Star requested that the commission reject CenterPoint's request to delete subsection (f)(2)(B), because the subsection helps assure that TSPs will have sufficient financial resources to fully perform their obligations.

LCRA stated that this provision should be clarified to indicate whether this "initial cost" refers to the phrase "cumulative total cost" as used in proposed subsection (g)(1)(A), or whether it is a reference to the costs associated with obtaining the CCN at the "initial" phase of a project.

Oncor recommended changes in proposed subsection (f)(2)(A) that it believed would provide adequate assurance of financial resources to the commission. Specifically, proposed clauses (i) and (ii) should be changed to subparagraphs (B) and (C) and connected with "and" instead of "or." Also according to Oncor, proposed subparagraph (A) should be one option and subparagraphs (B) and (C) should be the other. Oncor further recommended that the reference to financial commitment letter be deleted from proposed subsection (f)(2)(B) because such a commitment between a borrower and a lender would be premature prior to the awarding of a project. Oncor also stated that "financing mechanism" is a more appropriate term of art than "financing vehicle" in this provision. Oncor further recommended truncating the language related to the establishment of an investment-grade credit rating and providing for a five-year limitation on information required related to financial problems such as bankruptcy.

ITC stated that the financial criteria should be consistent with accounting statement terminology and the exact formula for calculation should be stated clearly, so that the calculations can be readily made using clearly defined data from financial statements such as a Securities and Exchange Commission (SEC) Form 10-K. ITC offered specific recommendations to clarify and remove any ambiguous language that defines the financial terms. More importantly, according to ITC, any financial resources criteria must also be consistent with the commission's pronouncements that it welcomes entrants into the transmission utility arena. ITC stated that proposed subsection (f)(2)(A)'s criteria would exclude entrants like itself even though ITC is an investment grade company with annual operating revenues over \$200 million and total assets over \$2 billion as of December 31, 2006. Thus, ITC stated that any criteria used should be adjusted so as not to exclude entrants who are otherwise financially healthy companies.

Oncor stated that the phrase “financial institutions” does not appear to be appropriate in the second sentence of this subpart. Similarly, it does not appear that the word “financial” is appropriate for use in the third sentence of proposed subsection (f)(2)(C).

STEC recommended that proposed subsection (f)(2)(D) not be required of cooperatives, because proposed subsection (d)(7) does not apply to municipal utilities or electric cooperatives.

CenterPoint stated that the requirement in proposed subsection (f)(2)(E) to provide information concerning history of bankruptcy, dissolution, merger, or acquisition should be limited to the past ten years because events that have occurred in the distant past are not relevant. Similarly,

Oncor stated that the requested information should be limited to some reasonable time such as the previous five years.

Commission Response

The commission disagrees with Sharyland that financial qualifications should be solely determined through an analysis of an Interested TSP's financial plan for its CTP Proposal, and in particular, the cost of capital or return on equity an Interested TSP proposes. Instead, the commission believes an Interested TSP's creditworthiness should be considered initially, as well as in the context of how it may be financially affected by its CTP Proposal. The commission is cognizant of the various financial characteristics of possible Interested TSPs and does not wish to raise the financial standards to a level that would qualify only financially elite TSPs. As previously stated, the commission agrees that a utility already operating transmission facilities in Texas has adequate financial resources to qualify to submit a CTP Proposal, and has changed the rule accordingly. On the other hand, holding a Texas CCN without operating transmission facilities in Texas or operating as an electric utility outside of Texas does not necessarily provide evidence of these resources. However, the commission has changed the rule to permit an Interested TSP to provide evidence satisfactory to the commission that it has adequate financial resources, which will permit non-traditional entities that may have non-traditional but adequate methods of financing to make a CTP Proposal.

The commission agrees with STEC that an investment grade credit rating alone is sufficient, but that providing alternative financial metrics for those Interested TSPs that do not have credit ratings is appropriate as well. Oncor's recommended changes to the rule

encompass this conclusion and the commission has revised the financial qualification standards to reflect this approach. The commission has also added definitions for the components of the required financial ratios and language that would allow it to consider qualifying an Interested TSP that had recently included a large capital asset addition or encountered some other non-recurring event that could temporarily negatively affect its ratios, but be favorable to ratepayers and an Interested TSP over the long term.

The commission has also considered comments regarding the language in proposed subsection (f)(2)(A) and has incorporated many of the clarifying suggestions. The commission disagrees with Lone Star and agrees with CenterPoint that proposed subsection (f)(2)(B) should be deleted and not just changed as LCRA and Oncor suggested, because this requirement is addressed in subsection (e)(1)(N)(ii) of the adopted rule.

Regarding STEC's comment that proposed subsection (f)(2)(D) should not be required of cooperatives because subsection (d)(7) does not apply to municipal utilities or electric cooperatives, the commission agrees and has included STEC's proposed change. The commission also agrees with Oncor that subsection (f)(2)(E), which requires Interested TSPs to provide information concerning history of bankruptcy, dissolution, merger, or acquisition be limited to the current calendar year and the past five calendar years, because events that have occurred earlier likely will have little relevance to an Interested TSP's current financial condition.

Subsection (f)(3)

Brazos identified various problems that it stated could occur if an entity other than the owner of the existing transmission facility upgrades the facility.

Commission Response

The commission can consider the concerns raised by Brazos when determining who should upgrade a facility.

Subsection (g)

ITC recommended that the rule be clarified to distinguish between TSPs within ERCOT and those that are non-ERCOT.

Commission Response

The commission has concluded in Docket Number 33672 that the initial CREZ transmission facilities will deliver energy to ERCOT. In the future, however, the CREZ process may be used for areas outside of ERCOT, and this rule could be used to select TSPs for the necessary transmission facilities. For this reason, the commission declines to make the change recommended by ITC.

Lone Star stated that the rule is not consistent throughout in regards to the requirements for the cost and schedule of a project.

Commission Response

The commission has reviewed the rule for consistency and has made changes where appropriate.

Lone Star stated that the commission should clarify that adequacy of existing service and need for new service be specifically excluded from the CTP Proposal.

Commission Response

This change is unnecessary because CTP Facilities are facilities that the commission has determined are needed.

Subsection (g)(1)

CenterPoint, LCRA, Lone Star, and Oncor had comments about providing cost estimates when a Designated TSP files its CCN application. They stated that costs would still be very preliminary and should be subject to updating because the final route would not be identified. Oncor stated that cost estimates should not be required every three months and that the cost approval process should be defined.

Commission Response

The commission agrees that cost estimates when the CCN application is filed are preliminary but concludes that these estimates are needed by the commission to track the progress of project implementation. Quarterly cost estimates are excessive and that provision in the rule has been deleted.

CenterPoint, LCRA, and Oncor recommended changes to the milestones on the development schedule for a CTP Facility. CenterPoint and LCRA stated that the requirements to predict percent complete on a three month interval is unnecessarily burdensome. LCRA stated that engineering and design could be scheduled, based on 30, 60, 90, and 100 percent complete which are intervals typically used in construction contracts. Also, right-of-way and land acquisition, material and equipment, and construction will probably be concurrent activities and may require a unique set of milestones for each CTP project. CenterPoint recommended that annual reports and not reports every three months be required and stated that the schedule should be consistent with the information concerning schedules described in the CCN application.

Commission Response

The commission has reduced the cost and schedule reporting requirements to lessen the burden on a Designated TSP while maintaining an adequate amount of information to track the progress of TSP Facility implementation.

Subsection (g)(2)

ITC and LCRA stated that the bond would be a costly regulatory and financial burden. LCRA stated that its contractors require performance bonds, so it should not be required to post an additional bond. CenterPoint, ITC, LCRA, Lone Star, and Oncor requested clarification of various issues. TIEC stated that the performance bond is inadequate to ensure performance and recommended that a performance bond in the amount of 100% of the reasonable cost of the CTP Facility be required.

Commission Response

The commission has eliminated the provisions concerning a performance bond, because the bond is unnecessary in light of the other means the commission has to ensure performance.

Subsection (g)(3)

CenterPoint and LCRA stated that the three-month reporting requirement should either be deleted, with the information being provided in the monthly transmission construction reports, or provided annually.

Commission Response

The commission concludes that the three-month reporting requirement should be changed to an annual requirement because the more frequent reporting does not enhance the oversight of project development. Annual reporting is sufficient considering the existing requirement to provide information in the monthly transmission construction report and the rule's requirement that a change in the implementation schedule that is greater than 60 days must be reported to the commission within 30 days of the change.

Subsection (g)(4)

CenterPoint stated that the difference in estimated and actual costs should be limited to 10%, instead of the proposed 5%. LCRA stated that it is difficult to accurately estimate a land acquisition schedule, and there is dubious value in attempting to estimate benchmarks against which a TSP's performance will be measured especially as they relate to the three month milestones.

Commission Response

The commission concludes that the schedule deviation reporting requirement is too detailed and has changed it to require deviations to the in-service date. Delays in any particular phase of a project are not necessarily an accurate indication that the project will not meet its in-service date. Projects can be accelerated in certain areas to overcome delays in other areas.

Subsection (g)(5)

CenterPoint, ITC, LCRA, and Oncor recommended that the commission delete the portion of the proposed rule that states the commission can revoke a CCN. They argued that the commission lacks the statutory authority to adopt the ability to revoke a certificate. Also, the adoption of this policy would create regulatory uncertainty. STEC submitted that the revocation provision should only occur after a contested case so that a record is available that would allow the TSP to seek judicial review.

Commission Response

The adopted rule provides that the commission may revoke a CCN if the commission determines that the Designated TSP has failed to comply with the CCN order for the CTP Facility. Each CTP Facility is an integral part of a plan to transport renewable energy from CREZs to customers. The failure to complete a CTP Facility may jeopardize the effectiveness and reliability of the overall plan. Therefore, the commission concludes that it is appropriate to expressly state in the rule a method to deal with the possibility that a Designated TSP will not comply with a CCN order concerning a CTP Facility. PURA §37.059 provides the commission the authority to revoke a CCN in the circumstance

addressed by the rule, because in that circumstance the Designated TSP will have failed to provide service as required by the CCN order, which as the commission has described, may jeopardize the effectiveness of the CREZ Transmission Plan.

Subsection (h)

E.ON/Iberdrola, LCRA, Luminant, Oncor, Sharyland, and TIEC recommended that the performance incentives not be adopted in this rulemaking. A number of issues were raised concerning performance incentives, including their legality, difficulty in implementation, potential for delays and increased costs in the CREZ process, changing rates in advance of a rate case, effectiveness of the incentives, multiple ROEs for transmission assets, discouraging participants, and creation of bias toward overestimating the costs and timing of projects. LCRA recommended that the performance incentives on projects apply to projects for which the Designated TSP is selected through the competitive solicitation process and would not apply if the existing owner is performing an upgrade or the commission makes a direct designation of the Designated TSP. If this provision remains in the rule, then LCRA recommended that a TSP be allowed to except from the application of any of the incentive mechanisms.

ITC stated that the incentive program would not be applicable to non-ERCOT region because of FERC regulation over transmission rates. LCRA argued that as a non-profit, it is not able to accept a penalty because it has no “profit.”

Lone Star recommended that the forecasted costs that comprise the performance plan be deemed prudent in a rate proceeding.

Commission Response

The commission has removed the performance incentives from the rule because it has other means of ensuring performance and because given the novelty of the TSP selection process addressed by the rule, it is best to avoid at this time unnecessary issues concerning performance incentives.

Subsection (i)

LCRA recommended that the Designated TSP not have to file testimony at the time the application is filed because this is not a requirement for any “non-critical” transmission project and is unnecessarily inefficient and unduly burdensome.

Lone Star stated that filing forms should be established for use in the Qualified TSP and Designated TSP applications.

Oncor stated that the word “direct” should be inserted before “testimony” in subsection (i).

Commission Response

The commission concludes that the filing of direct testimony with the application will appropriately expedite the certification phase of the implementation of the CTP Facilities. The commission further concludes that the requirements outlined in the rule are of sufficient detail for CTP Proposals, and therefore a form is not needed.

Subsection (j)

Lone Star assumed that the proceeding described in subsection (j) would be a contested case.

Commission Response

The type of proceeding that will be used for selection of Designated TSPs can be addressed in the proceeding itself.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this new section, the commission has made modifications to the section for the purpose of clarifying its intent.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 & Supp. 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 §37.059, which provides the commission the authority to revoke a CCN for failure to provide service; 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 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.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.005, 37.051, 37.056, 37.059, 39.203(e), and 39.904.

§25.216. Selection of Transmission Service Providers.

- (a) **Application.** This section applies to any transmission service provider (TSP), or entity seeking to become a TSP, that submits an application to construct, operate, and maintain one or more competitive renewable energy zone (CREZ) Transmission Plan (CTP) Facilities.
- (b) **Purpose.** The purpose of this section is to state the requirements that govern the selection and performance of one or more TSPs, or entities seeking to become 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 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 transmission line with or without a substation or any other transmission facility as identified in the CTP and designated by the commission.
 - (3) **CTP Proposal** -- An application to serve as a Designated TSP for one or more CTP Facilities that is submitted by an Interested TSP.
 - (4) **Designated TSP** -- An Interested TSP that the commission has designated 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 TSP as defined by §25.5(143) of this title (relating to Definitions) or that commits to meeting such definition as necessary to fulfill its obligations as a Designated TSP.

- (6) **Funds from operations** – Net income from continuing operations, depreciation and amortization, deferred income taxes, and other non-cash items.
 - (7) **Total debt** – Long-term debt, current maturities, commercial paper, and other short-term borrowings.
 - (8) **Historically underutilized business** – Defined by Texas Government Code §481.191, as it may be amended.
 - (9) **Interest** – Gross interest without subtracting capitalized interest and interest income.
- (d) **Selection process.** The following steps outline the process the commission will employ to select Designated TSPs.
- (1) The commission will initiate a proceeding that will invite each Interested TSP to file a CTP Proposal. The presiding officer shall set a procedural schedule that will enable the commission to decide the issues in the proceeding within 180 days after the deadline to file CTP Proposals unless good cause exists for setting a different schedule. The presiding officer may sever issues or CTP Proposals into separate proceedings.
 - (2) For each existing CTP Facility requiring an upgrade or modification, the commission will select the owner of the facility to be the Designated TSP for the CTP Facility, unless the owner requests that a different Interested TSP be selected or good cause exists to select another transmission service provider.
 - (3) For each new CTP Facility, the commission will select a Designated TSP pursuant to subsection (e) of this section.

(e) **Selection of Designated TSP.** The commission will evaluate each CTP Proposal received by considering, at a minimum, the current and expected capabilities of the Interested TSP to finance, license, construct, operate, and maintain the CTP Facility or Facilities in the most beneficial and cost-effective manner and the expertise of the Interested TSP's staff, the Interested TSP's projected capital costs and operating and maintenance costs for each CTP Facility, the Interested TSP's proposed schedule for development and completion of each CTP Facility, the Interested TSP's financial resources, the Interested TSP's expected use of historically underutilized businesses unless the Interested TSP is an electric cooperative or municipally owned utility, and the Interested TSP's understanding of the specific requirements to implement the CTP Facilities in its CTP Proposal and, if applicable, the Interested TSP's previous transmission experience and the Interested TSP's historical operating and maintenance costs for its existing transmission facilities.

(1) Each Interested TSP shall submit with its CTP Proposal the following information:

- (A) A description of the process that the Interested TSP will use for the preparation of any required application for a certificate of convenience and necessity (CCN).
- (B) For each CTP Facility transmission line, a general description of the proposed structure types (lattice, monopole, etc.) and composition (wood, steel, concrete, hybrid, etc.), conductor size and type, and right-of-way (ROW) width.
- (C) The projected in-service date of each CTP Facility.

- (D) A discussion of the type of resources, including relevant capability and experience (in-house labor, contractors, other TSPs, etc.) contemplated for use by the Interested TSP for the licensing, design, engineering, material and equipment procurement, ROW and land acquisition, construction, and project management related to the construction of each CTP Facility.
- (E) A discussion of the type of resources contemplated by the Interested TSP for operating and maintaining each CTP Facility after it is placed in-service.
- (F) A discussion of the capability and experience of the Interested TSP that would enable it to comply with all on-going scheduling, operating, and maintenance activities required for each CTP Facility, including those required by policies, rules, guidelines, and procedures established by the Electric Reliability Council of Texas independent system operator or other independent organization, if applicable.
- (G) Resumes for key management personnel that will be involved in obtaining a transmission CCN and constructing, operating, and maintaining each CTP Facility.
- (H) A discussion of the Interested TSP's business practices that demonstrates that its business practices are consistent with good utility practices for proper licensing, designing, ROW acquisition, constructing, operating, and maintaining CTP Facilities. The Interested TSP shall also provide the following information for the current calendar year and the five calendar years immediately preceding its filing under subsection (d)(1) of this section.

- (i) A summary of law violations by the Interested TSP found by federal regulatory agencies, state public utility commissions, other regulatory agencies, or attorneys general.
 - (ii) 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, for violation of any laws, including regulatory requirements.
- (I) For each CTP Facility transmission line, the estimated direct costs in current dollars to construct (including design, engineering, materials, labor, transportation and other necessary expenses but excluding ROW and land acquisition) representative tangent, 30-degree, and 90-degree structures suitable for the type of conductor that would be used. The estimated costs shall be provided for each type of structure that might be used such as lattice, monopole, etc.
- (J) For each CTP Facility transmission line, a detailed explanation and estimate of the Interested TSP's anticipated average annual operating and maintenance cost-per-mile in current dollars for the line for the first 10 years of operation. Also, the Interested TSP shall provide the actual average direct operating and maintenance cost-per-mile incurred by the Interested TSP for each of the last five calendar years for all transmission lines owned and operated by the Interested TSP that have the same voltage as the CTP Facility transmission line.

- (K) The Interested TSP's overhead rate for managing third-parties, if the Interested TSP contemplates the use of third-parties to perform any function related to the licensing, construction, operation, or maintenance of the CTP Facility and the willingness of the Interested TSP to maintain the overhead rate for the managing of the third-party operation and maintenance for a fixed period of time after the CTP Facility has been energized.
- (L) The Interested TSP's preexisting procedures and historical practices for acquiring ROW and land and managing ROW and land acquisition for transmission facilities. If the Interested 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.
- (M) The Interested TSP's preexisting procedures and historical practices for mitigating the impact of transmission facilities on affected landowners and for addressing public concerns regarding transmission facilities. If the Interested 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 CTP Facilities.
- (N) A proposed financial plan that confirms that:
- (i) adequate capital resources are available to the Interested TSP to allow the Interested TSP to finance the CTP Facilities, and
 - (ii) no significant negative impact on the creditworthiness or financial condition of the Interested TSP, as demonstrated in paragraphs (2)(A)-(D) of this subsection, will occur as a result of the

Interested TSP's construction, operation, and maintenance of the CTP Facilities. In evaluating an Interested TSP's financial plan the commission will consider the terms of the proposed financing available to the Interested TSP including variable and fixed cost financing, short-term and long-term maturities and an Interested TSP's willingness and ability to fix the cost of financing for a fixed period of time.

- (O) An affidavit by an officer of the Interested TSP stating that the information in the application is true and that the Interested TSP will comply with the applicable rules in this title and with the Public Utility Regulatory Act (PURA).
 - (P) Other evidence, at the discretion of the Interested TSP, which supports its selection as a Designated TSP.
 - (Q) Unless the Interested TSP is an electric cooperative or municipally owned utility, a description of the Interested TSP's use of historically underutilized businesses for the last five calendar years and expected use of historically underutilized businesses.
 - (R) Subparagraphs (A) through (N) of this paragraph do not apply to a CTP Proposal that is supported or unopposed by all parties in the proceeding by the deadline to file the CTP Proposal.
- (2) The Interested TSP must establish that it has adequate financial resources as described in subparagraphs (A)-(G) of this paragraph.
- (A) The Interested TSP holds a CCN issued by the commission for electric transmission facilities, or the Interested TSP holds a CCN issued by the

commission to provide retail electric service and operates electric transmission facilities in Texas;

- (B) The Interested TSP or its parent company or controlling shareholder or another company providing a bond guaranty or corporate commitment to the Interested TSP under subparagraph (E) of this paragraph must demonstrate an investment-grade credit rating as defined in subparagraph (E) of this paragraph; or
- (C) The Interested TSP must establish that it has:
 - (i) assets less any goodwill but including regulatory assets in excess of liabilities of at least 40% of the projected total cost of the CTP Facility on its most recent audited financial statements; and
 - (ii) the following minimum financial ratios, adjusted to exclude transition bonds of subsidiaries, obtained from the Interested TSP's most recent audited financial statements:
 - (I) funds from operations-to-interest coverage of 1.5x;
 - (II) funds from operations-to-total debt of 10%; and
 - (III) total debt-to-total capital no greater than 65%.

However, the commission may choose not to require compliance with the minimum financial ratios if the Interested TSP cannot meet them because of non-recurring events that are projected to be favorable to ratepayers and the Interested TSP's long-term operations and financial condition, such as a large asset addition to its rate base.

- (D) Notwithstanding subparagraphs (A)-(C) of this paragraph, the commission may determine that an Interested TSP is eligible for selection as a Designated TSP if the Interested TSP provides evidence satisfactory to the commission that it has the capability to finance the proposed CTP Facility it proposes to construct, operate, and maintain.
- (E) For an Interested 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. 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 Interested TSP shall provide alternative financial evidence within ten days of such suspension or withdrawal.
- (F) To the extent an Interested TSP is an electric utility as defined in PURA §31.002(6) and relies on an affiliated transmission and 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).

(G) The Interested TSP shall provide a summary of any history of bankruptcy, dissolution, merger, or acquisition of the Interested TSP or any predecessors in interest for the current calendar year and the five calendar years immediately preceding its filing under this subsection (d)(1) of this section.

(f) **Performance of Designated TSP.**

(1) If the commission determines that a Designated TSP has failed to submit a CCN application in compliance with the order designating it for a CTP Facility, the commission may revoke the designation awarded to it, and select another entity for the CTP Facility.

(2) Within six months of the date the commission grants the CCN for CTP Facilities, the Designated TSP shall, based on the latest available information, file with the commission the following information.

(A) The estimated total cost for each CTP Facility in the following categories:

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

(B) An implementation schedule for each CTP Facility that provides start and completion dates 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 implementation schedule shall also include the estimated in-service date of the CTP Facilities.

- (3) During implementation of each CTP Facility, the Designated TSP shall, within 30 days of becoming aware of any implementation schedule change that is greater than 60 days for the estimated dates provided pursuant to paragraph (2)(B) of this subsection, file with the commission a detailed explanation of the reasons for the change.
- (4) If the commission determines that the Designated TSP has failed to comply with the CCN order for the CTP Facility, the commission may revoke the CCN.
- (5) Each Designated TSP shall file an updated total cost for each of its CTP Facilities requiring a CCN, one year after CCN approval and annually thereafter until the CTP Facility is placed in-service.

(g) **Filing requirements.**

- (1) Notwithstanding §25.174(c)(4) of this title, the commission may establish and amend a filing schedule for the submission of CCN applications for CTP Facilities.
- (2) 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.

- (3) A Designated TSP filing a CCN application for a CTP Facility shall also file all direct testimony in support of the application at the time the application is filed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that new §25.216 relating to Selection of Transmission Service Providers is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS the _____ day of June 2008.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

JULIE CARUTHERS PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER