

PUC DOCKET NO. 23774

**PROCEEDING TO IMPLEMENT THE § PUBLIC UTILITY COMMISSION
CAPACITY AUCTION RULE § OF TEXAS**

ORDER

This Order addresses issues regarding the implementation of the Capacity Auction Rule, P.U.C. SUBST. R. 25.381. For the reasons discussed in this Order, the Commission approves the Master Agreement, including its schedules and exhibits, for the Electric Reliability Council of Texas (ERCOT), the Southwest Power Pool (SPP), and for Entergy Gulf States, as well as the Revised Mechanics Agreement. These agreements will govern the capacity auction and the use of capacity-auction products in each of the respective power regions.

I. Procedural Background

This proceeding was established on March 2, 2001, to facilitate implementation of the Capacity Auction Rule, P.U.C. SUBST. R. 25.381. The matter was docketed on May 2, 2001.¹ Commission Staff (Staff) and stakeholders, including buyers and sellers of capacity auction products, worked together to implement the rule as well as the standard procedures, or mechanics, for conducting the capacity auctions. Specifically, the parties sought to specify the details for scheduling capacity auction production and the types and amounts of ancillary services provided to the buyer. The parties were successful in addressing nearly all of these issues by agreement: Three non-unanimous agreements were reached regarding the operation of capacity auctions.

The Non-Unanimous Stipulation and Agreement Regarding ERCOT Capacity Auction Issues and Joint Motion for Good Cause Exception (ERCOT Agreement)² was filed on June 5, 2001, and was unopposed. The Non-Unanimous Stipulation and Agreement Regarding SPP Capacity Auction Issues

¹ Order No. 1 (May 2, 2001).

and Joint Motion for Good Cause Exception (SPP Agreement)³ was filed on June 18, 2001, and was unopposed. The Non-Unanimous Capacity Auction Mechanics Stipulation and Joint Motion for Good Cause Exception (Capacity Auction Mechanics) was filed on June 19, 2001, and was unopposed except for paragraph 7 of Exhibit A, which was opposed by American Electric Power Company, Inc. (AEP).⁴ Parties filed briefs in support of and opposed to the non-unanimous stipulations on June 26, 2001, including proposed findings of fact and conclusions of law. The Commission considered these agreements at the July 12 open meeting and granted interim approval.⁵

Subsequently, on July 24, 2001, FPL Energy, Enron Power Marketing, Constellation Power Source, OPC, Competitive Power Advocates and TXU Electric Company filed a joint motion for a good-cause exception to delay the completion of the initial capacity auction past the September 1, 2001 date required by P.U.C. SUBST. R. 25.381(f)(1)(A)(i). The parties also requested that the start of the initial capacity auction be delayed until September 5, 2001. Commission Staff and Entergy Solutions supported the joint motion and Entergy Gulf States did not oppose the motion.⁶ Dynegy and Calpine Corporation also filed a motion to delay the initial capacity auction. Reliant Energy, Reliant Resources, New Power, and Occidental Chemical Corporation opposed the motions to delay the capacity auction. The basis for the requested delay was to allow the parties to further fine-tune the capacity-auction process. The Commission considered the request at its August 2, 2001 open meeting and approved a short delay that would cause the initial auction to commence no later than September 5, 2001.⁷

On August 9, 2001, TXU, Reliant, Entergy, and the AEP Companies filed their revised 60-day notices of the September 5 capacity auction. On August 9, 2001, these parties also filed a revised mechanics stipulation. On August 15, 2001, Commission Staff filed its brief in support of the revised

² The ERCOT Agreement consists of the EEI/NEMA Master Power Purchase & Sale Agreement, Schedule CA, and Exhibit CA.

³ The SPP Agreement consists of the EEI/NEMA Master Power Purchase & Sale Agreement, Schedule CA-SPP, and Exhibit CA-SPP.

⁴ See AEP's Objection to the Non-Unanimous Capacity Auction Mechanics (June 22, 2001).

⁵ See Interim Order (Aug. 3, 2001).

⁶ Under the schedule established in the docket, the initial capacity auction was to commence on August 23, 2001.

mechanics and notices while OPC filed its objections and recommended revisions. In addition, on August 16, 2001, Entergy filed a motion to modify the Master Agreement for SPP and Schedule CA-SPP. The Commission considered the revised mechanics stipulation, the revised 60-day notices, and Entergy's motion at its August 23, 2001, open meeting.

II. Discussion

A. Paragraph 7, Exhibit A

In developing agreements for the Electric Reliability Council of Texas (ERCOT) and the Southwest Power Pool (SPP) regarding the capacity auctions, the goals were to maximize the ability of buyers to provide ancillary services out of the capacity auction products, minimize the variable costs of providing ancillary services, discipline buyers' scheduling behavior with respect to capacity entitlements purchased at auction, and recover sellers' incremental costs.⁸ Specifically, the agreements contain the details for scheduling capacity auction production and specify the types and amounts of ancillary services provided to the buyer.

AEP objected to paragraph 7 of Exhibit A of the Capacity Auction Mechanics, which establishes how the buyer's credit limit will be adjusted. AEP claimed that this paragraph imposes unreasonable credit risks on sellers and is not required by any statute, rule, or stipulations. AEP proposed that the assumed dispatch assumptions be altered. AEP argued that the seller might provide more than 50 days' worth of energy without the assurance that the buyer will pay for that energy. By setting unrealistically low dispatch levels, AEP contended that buyers would actually be able to incur obligations that exceed their credit limit. AEP also maintained that the rule does not require use of the proposed dispatch assumptions set forth in the Mechanics Agreement. AEP requested that the Commission reject paragraph 7 of the Capacity Auction Mechanics and adopt AEP's proposed dispatch assumptions. Staff, the Office of Public Utility Counsel (OPC), and Cities supported the stipulated Capacity Auction Mechanics after communicating with several buyers, asserting that paragraphs 2, 7, and 8 provide sufficient credit protection for sellers. Reliant neither supported nor

⁷ See Order Granting a Good Cause Exception (Aug. 7, 2001).

⁸ Staff's Brief in Support of Non-Unanimous Stipulation and Agreement (ERCOT) at 1; Staff's Brief in Support of Non-Unanimous Stipulation and Agreement (SPP) at 1-2.

opposed AEP's proposed changes. AEP replied that while it supports paragraphs 2 and 8, these paragraphs do not address AEP's specific concerns. OPC further argued that P.U.C. SUBST. R. 25.381(e)(5)(D)(i) meant that any entitlement that has no minimum required dispatch has a minimum required dispatch of zero. In addition, OPC argued that AEP's proposed dispatch assumptions are speculative and based upon no analysis or evidence. Finally, OPC maintained that peaking and cyclic capacity would be seldom used for energy in the future, resulting in lower dispatch assumption than proposed by AEP. The Commission found that the Mechanics Agreement, specifically paragraphs 2, 7, and 8 of Exhibit A provides adequate credit protection for the sellers without impeding the competitive bidding process.

B. Revised Mechanics Agreement

After the 60-day notices were filed by all utilities on July 3, 2001, TXU sponsored an expert from the National Economic Research Associates (NERA) to examine the Capacity Auction Rule, P.U.C. SUBST. R. 25.381, as well as the stipulations approved at the July 12, 2001, open meeting. Dr. Salant of NERA offered the following solutions:

- Allow bidders to switch among similar products during the auction
- Align opening minimum bids
- Keep prices aligned in the early rounds
- Let price increments reflect demand
- Add rounds to let the auction run to completion

The revised mechanics stipulation was adopted to address the concerns. Revised Exhibit A provides that the auction of the two-year entitlements begin on September 5, 2001, the one-year strips begin on September 10, 2001, and the discrete-month products begin on September 15, 2001. Additionally, the auction duration is extended to last no longer than five calendar days. Commission Staff, in its brief in support of the revised mechanics and notices, noted that the following modifications to the mechanics stipulation were made:

- Alignment of opening minimum bid prices: TXU lowered bid prices by 10%. Reliant filed bid prices closer to TXU and AEP.
- Avoidance price distortions in early rounds: TXU added a feature in its bid increment formula to keep price gaps between its products and Reliant's close in the early rounds of the auction.

- Price Increments to be based on demand: TXU and Reliant's bid increment formulas reflect demand. AEP's formula does not; however, Staff does not believe the formula will have an adverse affect.
- Additional Rounds: Rounds have been increased to for 50 rounds in each strip, without overlap.

OPC argued that the revised mechanics stipulation allows for the premature conclusion of the auction prior to reaching the market clearing prices, which could result in under-pricing and stranded costs to the seller. OPC recommended that the mechanics be revised to allow auctions, at least of the two-year strips, to continue until a market clearing price is reached.

The Commission finds that the revisions addressed the concerns raised in the motion to delay the capacity auction. The revisions represent a reasonable compromise between allowing additional time for more rounds and ending the auction within a reasonable time to facilitate subsequent proceedings. Accordingly, the Commission approves the revised mechanics stipulation as filed on August 9, 2001, and approves the revised 60-day notices as filed by the utilities.

C. Entergy's Motion

Entergy filed a motion to modify the Master Agreement and Schedule CA-SPP. Due to the ruling by FERC, which directed Entergy to pursue an alternative to joining an SPP-sponsored RTO, Entergy will have to conduct the capacity auction, in the short term, on a stand-alone basis. In addition, Entergy requested that the Master Agreement be revised to include a "regulatory out" provision. This provision would cancel the contract resulting from the capacity auction if the Commission were to delay retail customer choice. The Commission approves the following changes to Schedule CA-SPP: 1) rename Schedule CA-SPP to Schedule CA-Entergy; 2) deletion of all references to SPP sponsorship, involvement, market rules and guidelines as affecting the contract; 3) insertion of the requirement that all parties to the contract comply with Entergy's FERC-approved Open Access Tariff (OATT); and 4) deletion of Schedule CA-SPP provisions that were applicable only to other capacity auction participants within the SPP. The Commission does not approve the changes to the Master Agreement to provide for a "regulatory out" provision. The Commission finds that the revisions addressed the concerns raised in the motion to delay the capacity auction. The revisions

represent a reasonable compromise between allowing additional time for more rounds and ending the auction within a reasonable time to facilitate subsequent proceedings.

The Commission adopts the following findings of fact and conclusions of law:

II. Findings of Fact

Procedural History

1. On December 1, 2001, the Public Utility Commission of Texas (Commission) adopted P.U.C. SUBST. R. 25.381 regulating the statutorily required 15% capacity auction and defining the products to be auctioned (capacity auction products).
2. The Commission found it appropriate, as discussed in the preamble to P.U.C. SUBST. R. 25.381, to establish an implementation task force to examine what further provisions may be needed to ensure that capacity auction products can be adequately used in ancillary services markets and to address ERCOT settlement issues.
3. P.U.C. SUBST. R. 25.381(e)(1)(E) authorizes the owner of a capacity entitlement to use it to meet ancillary services needs, if the needs may be met in a manner consistent with procedures developed by the Commission.
4. On March 2, 2001, the Commission established this proceeding to implement the capacity auction rule.
5. On May 2, 2001, the Commission docketed this proceeding as a contested case proceeding to address remaining issues in the implementation of the capacity auction rule.
6. On May 8, 2001, the Commission Staff (Staff) published for comment in this docket the ERCOT Master Agreement, Schedule CA, the Letter Confirmation, and the Capacity Auction Mechanics.
7. On May 8, 2001, Staff published for comment in this docket the SPP Master Agreement, Schedule CA-SPP and Exhibit CA-SPP.

8. On May 22, 2001, a prehearing conference was convened to establish the procedural schedule and identify pending issues in the proceeding.
9. On May 24, 2001, the ALJ issued Order No. 2, granting intervention to Reliant Energy, Incorporated, Reliant Resources, Incorporated, TXU Electric Company, Southwestern Public Service Company, XERS Inc., XES Inc., Lower Colorado River Authority, Brazos Electric Power Cooperative, Competitive Power Advocates, Enron, Power Marketing, Inc., Office of Public Utility Counsel, Brownsville Public Utilities Board, Calpine Corporation, Coral Power, LLC, Dynegy Inc., Tractebel Power, Inc., Tractebel Energy Marketing Inc., Conoco Inc., Occidental Chemical Corporation, Entergy Gulf States, Inc., Electric Reliability Counsel of Texas, Inc., FPL Energy, LLC, Mirant Americas Energy Marketing, LP, Mirant Texas Management, Inc., Mirant Wichita Falls Management, Inc., Constellation Power Source, Inc., Entergy Solutions LTD, Entergy Solutions Select, LTD, AES NewEnergy, Inc., the AEP Companies (Central Power and Light Company, Southwestern Electric Power Company, and West Texas Utilities Company), and Cities (Steering Committee of Cities Served by TXU Electric Company & Steering Committee of Cities Served by Central Power and Light).
10. On June 5, 2001, Reliant Energy, Incorporated, Reliant Resources, Incorporated, TXU Electric Company, Occidental Chemical Corporation, Mirant Americas Energy Marketing, LP, Mirant Texas Management, Inc., Mirant Wichita Falls Management, Inc., FPL Energy, LLC, Competitive Power Advocates, and the Brownsville Public Utilities Board executed and filed the Non-Unanimous Stipulation and Agreement Regarding ERCOT Capacity Auction Issues and Joint Motion for Good Cause Exception (ERCOT Stipulation), adopting modified versions of the ERCOT Agreement.
11. On June 5, 2001, Staff filed its Brief in Support of the Non-Unanimous Stipulation and Agreement Regarding ERCOT Capacity Auction Issues and Joint Motion for Good Cause Exception, supporting the provisions of the ERCOT Stipulation.
12. On June 12, 2001, a prehearing conference was held to address various procedural issues in this proceeding.

13. At the June 12, 2001, prehearing conference parties waived their rights to a hearing.
14. At the June 12, 2001, prehearing conference, Administrative Law Judge (ALJ) Mark Gentle issued Order No. 4 requiring parties to 1) file no later than June 18, 2001, the Non-Unanimous Stipulation and Agreement Regarding SPP Capacity Auction Issues and Joint Motion for Good Cause Exception (SPP Stipulation); 2) file, no later than June 19, 2001, the Stipulation and Agreement Regarding Auction Mechanics and Joint Motion for Good Cause Exception (Mechanics Stipulation); and 3) file, no later than June 28, 2001, proposed findings of fact and conclusions of law for any unopposed stipulations in this docket.
15. On June 18, 2001, Mirant, Entergy Texas, Xcel Energy, and American Electric Power Company executed and filed the SPP Stipulation, adopting modified versions of the SPP Agreement.
16. On June 19, 2001, Reliant Energy, Incorporated, Reliant Resources, Incorporated, Mirant Americas Development, Inc., AES NewEnergy, Inc., and TXU Electric Company executed and filed the Stipulation and Agreement Regarding Auction Mechanics and Joint Motion for Good Cause Exception (“Mechanics Stipulation”), adopting a modified version of the Capacity Auction Mechanics.
17. On June 21, 2001, Southwestern Public Service Company (SPS) filed a motion to withdraw its intervention in this docket and the compliance filing for its Capacity Entitlement Auction Plan, based upon the passage of House Bill 1692, which eliminated SPS’s obligation to participate in the capacity entitlement auction.
18. On June 22, 2001, Staff filed it’s Brief in Support of the Non-Unanimous Stipulation and Agreement Regarding SPP Capacity Auction Issues and Joint Motion for Good Cause Exception, supporting the provisions of the SPP Stipulation.
19. On June 22, 2001, AEP filed its objection to the non-unanimous capacity auction mechanics stipulation.

20. On June 26, 2001, the ALJ issued Order No. 5, requiring proposed findings of fact and conclusions of law on the Mechanics and SPP Stipulations be filed by June 28, 2001, regardless of any objections filed.
21. On June 28, 2001, OPUC filed its response to the AEP Companies' objections to the Capacity Auction Mechanics.
22. On June 28, 2001, the AEP Companies' filed their brief regarding objections to the Capacity Auction Mechanics.
23. On June 28, 2001, Staff filed its brief in support of the Capacity Auction Mechanics.
24. On June 28, 2001, Reliant Energy and Reliant Resources filed their joint response to AEP Companies' objection to the Capacity Auction Mechanics.
25. On July 5, 2001, OPUC filed its response to the AEP Companies' reply brief regarding objections to the non-unanimous capacity auction mechanics stipulation.
26. On July 11, 2001, the ALJ issued Order No. 6 admitting into the evidentiary record 1) the Non-Unanimous Stipulation and Agreement Regarding ERCOT Capacity Auction Issues and Joint Motion for Good Cause Exception filed on June 5, 2001; 2) the Non-Unanimous Stipulation and Agreement Regarding SPP Capacity Auction Issues and Joint Motion for Good Cause Exception filed on June 18, 2001; and 3) the Non-Unanimous Stipulation and Agreement Regarding Capacity Auction Mechanics and Joint Motion for Good Cause Exception filed on June 19, 2001.
27. On July 12, 2001, the ALJ granted the SPS motion to withdraw its intervention and capacity auction plan.
28. On July 20, 2001, the Commission signed an interim order approving the ERCOT Agreement, the SPP Agreement, and the Capacity Auction Mechanics, consistent with their respective non-unanimous Stipulations.

29. On July 24, 2001, FPL Energy, Enron Power Marketing, Constellation Power Source, the Office of Public Utility Counsel, Competitive Power Advocates and TXU Electric Company filed a joint motion for a good-cause exception to delay the completion of the initial capacity auction past September 1, 2001, and delay the start of the initial capacity auction until September 5, 2001. Commission Staff supported the joint motion and Entergy Gulf States did not oppose the motion.
30. Reliant Energy, Reliant Resources, New Power, and Occidental Chemical Corporation opposed the motion to delay the capacity auction.
31. The Commission considered the motion to delay the capacity auction at its August 2, 2001, open meeting.
32. The Commission approved the delay in the capacity auction.
33. The Commission ordered the capacity auction to commence no later than September 5, 2001.
34. On August 9, 2001, TXU, Reliant, Entergy, and the AEP Companies filed revised 60-day notices.
35. On August 9, 2001, Reliant Energy, Inc., Reliant Resources, Inc. and AEP filed a Revised Stipulation and Agreement Regarding Capacity Auction Mechanics and Joint Motion for Reconsideration of Interim Order (Revised Mechanics Stipulation) and attached a Revised Exhibit A.
36. On August 16, 2001, Entergy filed a motion to modify Schedule CA-SPP and the Mechanics Agreement.
37. On August 23, 2001, the ALJ issued Order No. 11 admitting documents into the evidentiary record of this proceeding.
38. On August 23, 2001, the ALJ admitted into evidence the revised notices of TXU, Reliant, Entergy, WTU, CPL, and SWEPCO as filed on August 9, 2001.

39. On August 23, 2001, the ALJ admitted into evidence the Revised Stipulation and Agreement Regarding Capacity Auction Mechanics and Joint Motion for Reconsideration of Interim Order as filed on August 9, 2001.
40. On August 23, 2001, the ALJ admitted into evidence the Correction of Reliant of Notice of Capacity Auction as filed on August 13, 2001.
41. On August 23, 2001, the AJJ admitted into evidence the Motion of Entergy Gulf States, Inc. to Modify Master Agreement and Schedule CA-SPP as filed on August 16, 2001.
42. The Commission considered the revised 60-day notices, revised mechanics stipulation, and Entergy's motions at its August 23, 2001, open meeting.
43. The Commission approved the revised 60-day notices, revised mechanics stipulation, and the modifications to Schedule CA-SPP.
44. The Commission denied Entergy's request to modify the Master Agreement through a "regulatory out" provision.

ERCOT

45. The ERCOT Stipulation seeks approval of the Master Agreement, Schedule CA, and the Letter Confirmation.
46. This stipulation is the product of negotiation and compromise among potential buyers and sellers of capacity auction products within the ERCOT market.
47. The non-stipulating parties to this docket were afforded the opportunity to be heard on the merits of the ERCOT Stipulation.
48. No party to this docket objected to or opposed the ERCOT Stipulation.
49. P.U.C. SUBST. R. 25.381 (f) and (j) allow the Commission to modify the procedures or products of the capacity auction upon a finding that such modifications are required to better value the products or better suit the needs of the competitive market.

50. *Schedule CA*, Section K.1(a)(iv)(B), allows for 3 MW of ancillary services to be provided from the baseload product, in addition to the +/-10% of energy change in the hour referenced in P.U.C. SUBST. R. 25.381(e)(5)(C)(i).
51. *Schedule CA*, Section K.2(a)(iv)(E), allows for a total of 10 MW of ancillary services to be provided by the Gas-Intermediate product, which could cause the energy from this product to change more than the +/-25% of energy change in the hour referenced in P.U.C. SUBST. R. 25.381(e)(5)(C)(ii).
52. *Schedule CA*, Section K.2(a)(iv)(F), allows buyers the option to stop the energy from the Gas-Intermediate product two times per month, subject to certain restrictions, which is different than the provisions of P.U.C. SUBST. R. 25.381(e)(1)(B)(i) imposing a minimum energy take on the Buyer seven days per week and 24 hours per day. If the buyer chooses to exercise its option to stop the energy from the Gas-Intermediate product, the fuel-pricing index used will be changed from monthly to daily.
53. The portions of *Schedule CA* described in Findings of Fact 49 through 51 deviate from the provisions of P.U.C. SUBST. R. 25.381. These requested exceptions to the rule will enhance the value of capacity auction products and better suit the needs of the competitive market. They will benefit buyers by giving them additional flexibility to provide ancillary services, and will not cause any undue adverse effects on sellers.
54. Under *Schedule CA*, Section B, parties engaged in capacity auction transactions must comply with the ERCOT Protocols and reasonably cooperate with other parties in their effort to similarly comply with the ERCOT Protocols, and transactions involving capacity auction products will be governed by Texas law.
55. *Schedule CA*, Section C, addresses and allows for, under certain circumstances, the transfer of entitlements by buyers, subsequent holders of the entitlement, and sellers. *Schedule CA*, Section C, also allows for transfer of entitlements in a manner that transfers all responsibility for performance to the transferee.

56. *Schedule CA* addresses the procedures for scheduling energy and ancillary services, including the required content of such schedules and sets forth the procedures for dealing with non-conforming schedules.
57. *Schedule CA* addresses procedures for settling energy and ancillary service transactions for capacity auction products, including provisions for higher gas prices and heat rate values in certain circumstance in order to more accurately track the costs of providing certain services.
58. *Schedule CA* addresses seller's scheduling of forced outages.
59. *Schedule CA* allows for the provision of ancillary services from the capacity auction products, but not every ancillary service is available from every capacity auction product. The following ancillary services are available from one or more of the capacity auction products: Non-Spinning Reserve Service, Regulation Service Up, Regulation Service Down, Responsive Reserve Service, Balancing Energy Service Up, and Balancing Energy Service Down.
60. *Schedule CA* addresses the procedures for dispatching ancillary services and the settlement of dispatched ancillary services.
61. Under *Schedule CA*, Section F, parties to capacity auction product purchases shall first use alternative dispute resolution procedures to settle any dispute regarding those products.
62. *Schedule CA*, Section I, provides that buyers and sellers will read the procedures and rules for capacity auctions, which will be provided by sellers, and that they will be bound by those procedures and rules at the time they sign the EEI/NEMA Master Power Purchase & Sale Agreement (Master Agreement).
63. The terms of the ERCOT Stipulation are reasonable and should be adopted.

SPP

64. The SPP Stipulation seeks approval of the Master Agreement, Schedule CA-SPP, and Exhibit CA-SPP.

65. The SPP Stipulation is the product of negotiation and compromise among potential buyers and sellers of capacity auction products within the SPP market.
66. The non-stipulating parties to this docket were afforded the opportunity to be heard on the merits of the SPP Stipulation.
67. No party to this docket objected to or opposed the SPP Stipulation.
68. P.U.C. SUBST. R. 25.381 (f) and (j) allows the Commission to modify the procedures or products of the capacity auction upon a finding that such modifications are required to better value the products or better suit the needs of the competitive market.
69. *Schedule CA-SPP*, Sections 2A and 2B, provides an option for the buyer to stop the energy from the Gas-Intermediate capacity auction product two times per month (in combination with a change in the fuel pricing index from monthly to daily), whereas P.U.C. SUBST. R. 25.381(e)(1)(B)(i) and (iv) impose a minimum energy take on the buyer 7 days per week and 24 hours per day.
70. *Schedule CA-SPP*, Section 2B, provides for the use of the Henry Hub index price of gas as a fuel price multiplier for Entergy's gas-fired plants located in Louisiana, whereas P.U.C. SUBST. R. 25.381(c)(6) and 25.381(e)(1)(B)(iii) state that the Houston Ship Channel index shall be used to calculate the fuel price.
71. *Schedule CA-SPP*, Sections 2A and 2B, provides for the use of a 10,850 Btu/kWh heat rate multiplier to determine the price of fuel for the Gas-Intermediate capacity auction products, whereas P.U.C. SUBST. R. 25.381(e)(1)(B)(iii) calls for the use of a 9,900 Btu/kWh heat rate multiplier.
72. The portions of *Schedule CA-SPP* described in Findings of Fact 68 through 70 deviate from the provisions of P.U.C. SUBST. R. 25.381. These requested exceptions to the rule will enhance the value of capacity auction products and better suit the needs of the competitive market. They will benefit buyers by giving them additional flexibility to provide ancillary services, and will not cause any undue adverse effects on sellers.

73. Under *Schedule CA-SPP*, Section B, parties engaged in capacity auction transactions must comply with the SPP Market Rules and Tariffs and reasonably cooperate with other parties in their effort to similarly comply with the SPP Market Rules and Tariffs.
74. *Schedule CA-SPP*, Section C, addresses and allows for, under certain circumstances, the transfer of Entitlements by Buyers, subsequent holders of the entitlement, and sellers. *Schedule CA*, Section C, also allows for transfer of entitlements in a manner that transfers all responsibility for performance to the transferee.
75. *Schedule CA-SPP* addresses the procedures for scheduling energy and ancillary services, including the required content of such schedules and sets forth the procedures for dealing with non-conforming schedules.
76. *Schedule CA-SPP* addresses procedures for settling energy and ancillary service transactions for Capacity Auction Products, including provisions for higher gas prices and heat rate values in certain circumstance in order to more accurately track the costs of providing certain services.
77. *Schedule CA-SPP* addresses seller's scheduling of forced outages.
78. *Schedule CA-SPP* allows for the provision of ancillary services from the capacity auction products, but not every ancillary service is available from every capacity auction product. The following ancillary services are available from one or more of the capacity auction products: Non-Spinning Reserve Service, Regulation Service Up, Regulation Service Down, Responsive Reserve Service, Balancing Energy Service Up, and Balancing Energy Service Down.
79. *Schedule CA-SPP* addresses the procedures for dispatching ancillary services and the settlement of dispatched ancillary services.
80. Under *Schedule CA-SPP*, Section F, parties to capacity auction product purchases shall first use alternative dispute resolution procedures to settle any dispute regarding those products.

81. *Schedule CA-SPP*, Section H, provides that buyers and sellers will read the procedures and rules for capacity auctions, which will be provided by sellers, and that they will be bound by those procedures and rules at the time they sign the Master Agreement.
82. The terms of the SPP Stipulation are reasonable and should be adopted.

Entergy

83. On August 16, 2001, Entergy filed a motion to modify Schedule CA-SPP to address the FERC order directing Entergy to participate in mediation to explore membership in a Regional Transmission Organization within SERC.
84. Entergy designated the modifications to Schedule CA-SPP as new “Schedule CA-Entergy.”
85. Entergy’s proposed modifications to Schedule CA-SPP include revisions to eliminate the participation of the SPP in the implementation of the capacity auction, and instead conduct capacity sales consistent with the Entergy Open Access Tariff (Exhibit A to Entergy’s motion to modify).
86. Entergy proposed modifications to the Master Agreement included a “regulatory out” provision, whereby the capacity sales contract would be automatically terminated in the event that the Commission were in the future to order a delay in the commencement of retail open access in Entergy’s service territory (Exhibit B in Entergy’s Motion to Modify). In addition, Entergy requested that the Master Agreement be corrected to reference Schedule CA-Entergy and Exhibit CA-Entergy, rather than Schedule CA-SPP and Exhibit CA-SPP.
87. Entergy’s amendments to Schedule CA-SPP do not materially affect the terms and conditions governing capacity auctions outside of ERCOT and set forth in the SPP Stipulation.
88. Schedule CA-SPP is amended to include the following: 1) deletion of all references to SPP sponsorship, involvement, market rules and guidelines as affecting the contract; 2) insertion of the requirement that all parties to the contract comply with Entergy’s Open Access Tariff (OATT) and Entergy Transmission Business Practices, rather than SPP rules and standards; and

3) deletion of Schedule CA-SPP provisions that were applicable only to other capacity auction participants within the SPP (i.e., Southwestern Electric Power Company).

89. Entergy's amendments to Schedule CA-SPP are reasonable and should be adopted.
90. The modifications to Schedule CA-SPP shall only be applicable in capacity auctions conducted by Entergy (or its successors in interest).
91. In the case of Entergy only, the SPP Stipulation is approved, with the inclusion of the contract amendments to Entergy's motion to modify, including Exhibit A of that motion.

Capacity Auction Mechanics

92. The Revised Capacity Auction Mechanics Stipulation seeks approval of the Capacity Auction Mechanics (Revised Exhibit A).
93. The Revised Capacity Auction Mechanics Stipulation is the product of negotiation and compromise among potential buyers and sellers of capacity auction products within the ERCOT and SPP markets.
94. The non-stipulating parties to this docket were afforded the opportunity to be heard on the merits of the SPP Stipulation.
95. AEP Companies filed an objection to the Mechanics Stipulation, requesting higher assumed dispatch percentages in paragraph 7 of the Capacity Auction Mechanics.
96. P.U.C. SUBST. R. 25.381(f) and (j) allows the Commission to modify the procedures or products of the capacity auction upon a finding that such modifications are required to better value the products or better suit the needs of the competitive market.
97. *Revised Exhibit A* provides that a capacity auction seller apply the credit requirements of P.U.C. SUBST. R. 25.381(e)(5)(D)(i)(I) and (IV), so that the amount of credit available to a bidder relying on its investment grade credit rating or its guarantor's investment grade credit rating will be determined according to the same standard that ERCOT uses to determine the

amount of credit available to a Qualified Scheduling Entity (QSE) based on the QSE's investment grade credit rating. This procedure is not addressed in P.U.C. SUBST. R. 25.381.

98. *Revised Exhibit A*, Section 1 provides that in order to bid, potential bidders must, not less than 30 days before the auction opens, execute the Master Agreement posted on a seller's website, including all schedules and attachments thereto, and agree to be bound by all the terms and procedures for seller's capacity auction.
99. *Revised Exhibit A*, Section 3 provides that sellers will notify potential bidders of their credit availability within 10 business days after submission by potential bidders of the required information.
100. *Revised Exhibit A*, Section 4(a) provides that a seller will be deemed to have met its requirement to auction 15% of its generation capacity if all of its offered entitlements are awarded for a given month. If all offered entitlements are not awarded for a given month, seller must notify the Commission and propose a plan to sell the remaining entitlements. The Capacity Auction Mechanics document, as adopted in the Mechanics Stipulation, addresses the procedures for rolling unsold entitlements into the successive portions of the auction.
101. *Revised Exhibit A*, Section 4(b), provides that sellers will establish and maintain an auction website(s) where buyers can obtain the forms, contracts and other information necessary to participate in the auctions.
102. *Revised Exhibit A*, Section 4(c), provides that all auctions for a specific product will be held simultaneously by all sellers of entitlements within the respective NERC regions in Texas.
103. *Revised Exhibit A*, Section 4(d), provides that the auctions will be sequence by first, the two-year strip auction; second, the one-year strip auction; and finally the discrete-month auction.
104. *Revised Exhibit A*, Section 4(e), provides that the auctions will be conducted in three parts starting at different times. The first will be for the two-year strips (beginning September 5, 2001), the second for the one-year strips (beginning September 10, 2001) and the third for discrete months (beginning September 15, 2001).

105. *Revised Exhibit A*, Section 4(e) and (f), provides that the three parts of the auctions will each last for no longer than five calendar days. Each seller is required to create and apply its formula for changing prices between rounds so that the auction will conclude by the last round on the fifth day. If demand exceeds supply on the last round of the auction, then the auction will close and entitlements will be apportioned as described below as if there had been one additional round in which demand was zero.
106. *Revised Exhibit A*, Section 4(g), provides that auction rounds will last 90 minutes, with 45 of those minutes devoted to accepting bids, and the other 45 minutes devoted to analyzing bids and updating the auction price.
107. *Revised Exhibit A*, Section 4(i), provides that sellers will be entitled to reduce the number of Entitlements available in the months of March, April, May, October, and November to account for planned outages.
108. *Revised Exhibit A*, Section 4(j), provides that bidders will be awarded Entitlements based on 1) the bid price in the next-to-last round and 2) the quantity bid in the last round plus a pro-rata share of the quantity bid in the next-to-last round. The pro-rata share of Entitlements will be determined using the bid differential between the quantity bid in the next-to-last and last rounds for each winning bidder, and bid time stamps in the event of a tie.
109. *Revised Exhibit A*, Section 6, provides that sellers will notify all bidders and the Commission when entitlements are awarded.
110. *Revised Exhibit A*, Section 7, provides that a bidders' credit limit will be analyzed after each auction round. The credit limit will be compared to the bid amount plus the amount necessary to exercise the Entitlement for the lesser of a rolling 3-month period or the duration of the Entitlement strip.
111. *Revised Exhibit A*, Section 7, provides that in analyzing bidders' credit limit, the following assumed dispatch figures will be used to calculate the amount of money necessary to exercise the Entitlement: Baseload 80%, Gas-Intermediate 30%, Gas-Cyclic 0%, and Gas-Peaking 0%.

112. *Revised Exhibit A*, Section 8, provides that if a bidder uses a surety bond to establish its credit requirements, the form of that surety bond will be negotiated in good faith between bidder and seller and will be a form reasonably acceptable to an issuer of surety bonds.
113. The terms of the Capacity Auction Mechanics, as adopted in the Mechanics Stipulation and amended by the Revised Mechanics Stipulation, are reasonable and should be approved.

III. Conclusions of Law

1. The Public Utility Commission of Texas has jurisdiction over the parties and the subject matter in this proceeding, and the authority to adopt the capacity auction implementation plan described herein, pursuant to PURA §§ 14.001, 32.001, and 39.153.
2. The provision of notice in this proceeding complies with P.U.C. PROC. R. 22.55.
3. This proceeding was processed in accordance with the requirements of PURA and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-092 (Vernon 2000 & Supp. 2001)(APA).
4. This proceeding is properly resolved by informal disposition pursuant to P.U.C. PROC. R. 22.35 and APA § 2001.056.
5. Good cause exists to grant, pursuant to P.U.C. SUBST. R. 25.3 and P.U.C. SUBST. R. 25.381(f) and (j), the exceptions to P.U.C. SUBST. R 25.381 noted in the ERCOT, SPP, and Revised Mechanics Stipulations.

ERCOT

6. The terms of the ERCOT Stipulation are fair, just and reasonable, and supported by the record.
7. Because the ERCOT Stipulation was not opposed or objected to by any party in this docket, it should be treated as a unanimous stipulation.

8. The ERCOT Stipulation is consistent with the requirements of PURA § 39.153, P.U.C. SUBST. R. 25.381 and P.U.C. SUBST. R. 25.3.
9. Pursuant to P.U.C. SUBST. R. 25.381(f) and (j), the capacity auction products and procedures listed in P.U.C. SUBST. R. 25.381 require modification to better value the products and better suit the needs of the competitive market.

SPP

10. The terms of the SPP Stipulation are fair, just and reasonable, and are supported by the record.
11. Because the SPP Stipulation was not opposed or objected to by any party in this docket, it should be treated as a unanimous stipulation.
12. The SPP Stipulation is consistent with the requirements of PURA § 39.153, P.U.C. SUBST. R. 25.381 and P.U.C. SUBST. R. 25.3.
13. Pursuant to P.U.C. SUBST. R. 25.381 (f) and (j), the capacity auction products and procedures listed in P.U.C. SUBST. R. 25.381 require modification to better value the products and better suit the needs of the competitive market.
14. The revised assignment of Entergy's generating units to entitlement products, shown in Exhibit B of the SPP Stipulation, is reasonable and in compliance with the Commission's capacity auction rule.
15. It is reasonable and in compliance with the Commission's capacity auction rule for Entergy to include an adder in its opening bid price for base load entitlements to account for the difference between the three-year (1998-2000) average forced outage rates at its base load units (including planned derates at River Bend Station) and the forced outage rate permitted in P.U.C. SUBST. R. 25.381(e)(2).

Entergy

16. In the case of Entergy only, the terms of the SPP Stipulation, as modified consistent with Entergy's motion to modify Schedule CA-SPP, are reasonable and supported by the record.
17. The SPP Stipulation, as modified by Entergy's changes to Schedule CA-SPP, is consistent with the requirements of PURA § 39.153, P.U.C. SUBST. R. 25.381 and P.U.C. SUBST. R. 25.3.

Capacity Auction Mechanics

18. The Mechanics Stipulation and the Revised Mechanics Stipulation are non-unanimous stipulations.
19. The proposed capacity auction implementation plan set forth in the Revised Capacity Auction Mechanics complies with PURA § 39.153, P.U.C. SUBST. R. 25.381 and P.U.C. SUBST. R. 25.3.
20. Pursuant to P.U.C. SUBST. R. 25.381 (f) and (j), the capacity auction products and procedures listed in P.U.C. SUBST. R. 25.381 require modification to better value the products and better suit the needs of the competitive market.

IV. Ordering Paragraphs

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

1. The ERCOT Agreement, the SPP Agreement, the EGS Agreement and the Revised Capacity Auction Mechanics, consistent with their respective non-unanimous Stipulations, as modified by this Order, are approved.
2. Together, the ERCOT Master Agreement and its Schedule CA and Letter Confirmation, and the Revised Mechanics Agreement shall form the ERCOT contract governing the auction and use of capacity auction products in the statutorily required 15% capacity auctions.

3. Together, the SPP Master Agreement and its Schedule CA-SPP and Exhibit CA-SPP, and the Revised Mechanics Agreement shall form the SPP contract governing the auction and use of capacity auction products in the statutorily required 15% capacity auctions.
4. Together, the EGS Master Agreement and its Schedule CA-Entergy and Exhibit CA-Entergy, and the Revised Mechanics Agreement shall form the Entergy contract governing the auction and use of capacity auction products in the statutorily required 15% capacity auctions.
5. Consistent with P.U.C SUBST. R. 25.381 (f) and (j), the Commission grants the good cause exceptions as specifically stated in Finding of Fact Nos. 49-51, 68-70, and 96.
6. The entry of an order consistent with the Non-unanimous Stipulations does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Non-Unanimous Stipulations. The entry of an order consistent with the Non-Unanimous Stipulations should also not be regarded as a binding holding or precedent as the appropriateness of any principle or methodology underlying the Non-Unanimous Stipulations.
7. All motions or requests for entry of specific findings of fact and conclusions of law, and other requests for general or specific relief not expressly granted, are denied for want of merit.

SIGNED AT AUSTIN, TEXAS the _____ day of _____ 2001.

PUBLIC UTILITY COMMISSION OF TEXAS

MAX YZAGUIRRE, CHAIRMAN

BRETT A. PERLMAN, COMMISSIONER

REBECCA KLEIN, COMMISSIONER