



Control Number: 24770



Item Number: 161

Addendum StartPage: 0

DOCKET NO. 24770

RECEIVED

02 NOV -8 PM 1:42

REPORT OF THE ELECTRIC §
RELIABILITY COUNCIL OF TEXAS §
(ERCOT) TO THE PUCT REGARDING §
IMPLEMENTATION OF THE ERCOT §
PROTOCOLS §

PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

**COMMISSION STAFF'S RESPONSE TO TEX-LA'S
NOVEMBER 4, 2002 PLEADING CONCERNING PCRS¹**

As explained below, Tex-La's Pleading is meritless. Consequently, the Commission should price PCRs consistent with the Revised Non-Unanimous Stipulation and Agreement regarding Preassigned Transmission Congestion Right Pricing filed on October 11, 2002 ("Stipulation").

**I. TEX-LA HAS NO RIGHT TO A SEPARATE HEARING ON THE
STIPULATION**

The parties agreed to waive their right to a hearing on all of the issues in this docket and, instead, stipulate to certain facts and file briefs.² Subsequent to the filing of these stipulated facts and briefs, the Commission decided a number of PCR issues but directed the parties to attempt to settle a single issue concerning PCRs – their pricing.³ Pursuant to the Commission's direction, a

¹ This pleading uses the following abbreviations: AEP – American Electric Power; Commission – Public Utility Commission of Texas; ERCOT – Electric Reliability Council of Texas; PURA – Public Utility Regulatory Act, Texas Utilities Code, Title II; PCR – preassigned transmission congestion right; SB7 – Senate Bill 7, which contained amendments to PURA effective in 1999; SPP – Southwest Power Pool; Staff – staff of the Public Utility Commission of Texas; Stipulation - Revised Non-Unanimous Stipulation and Agreement regarding Preassigned Transmission Congestion Right Pricing, filed on October 11, 2002; TCR – transmission congestion right; Tex-La – Tex-La Electric Cooperative of Texas, Inc.; Tex-La's Pleading – Tex-La Electric Cooperative of Texas, Inc.'s Filing Appealing Order No. 16, Opposing the Non-Unanimous Stipulation, and Addressing Other Issues Related to Its Rights, and, in the Alternative, Requesting a Hearing, filed November 4, 2002; WTU – West Texas Utilities Company.

² See Order No. 7.

³ Order No. 15.

Stipulation addressing this issue was filed, and all parties and all movants to intervene other than Tex-La either are signatories to the Stipulation or are unopposed to it.

Tex-La does not challenge the original lack of hearing prior to the Commission's decision on a number of PCR issues and the filing of the Stipulation. Instead, Tex-La argues that it has a right to a hearing on the Stipulation, which deals with a single issue, PCR pricing. Tex-La is wrong. Just as the current record – the briefs and the stipulated facts – provide ample support for the Commission's decision on other PCR issues, so does the record contain ample support for the Stipulation's proposed resolution of the PCR pricing issue. Thus, the Commission can resolve the PCR pricing issue based on the current record, consistent with the Stipulation, because the Stipulation does not seek to introduce new evidence into the record, but rather recommends a particular result based on the existing record.

The Stipulation proposes that PCRs be priced at 15% of the market-clearing price for the corresponding TCR auction. This pricing is amply supported by the existing record. As an alternative to its recommendation for elimination of PCRs, Staff recommended in its initial brief that the price of PCRs be tied to the market-clearing price for the corresponding TCR auction, as is provided for in the Stipulation.⁴ Specifically, Staff recommended that PCRs be priced to equal no less than 80% of the TCR auction price.⁵ Tex-La and other parties and movants to intervene were given the opportunity, and did, file reply briefs that addressed this Staff recommendation, many of whom argued for a continuation of the current PCR pricing, which requires payment of only trivial amounts by PCR recipients to ERCOT.⁶ Faced with a record containing arguments

⁴ Commission Staff's Initial Brief (1/25/02), p. 42, last paragraph – p. 43, first paragraph.

⁵ *Id.*

⁶ See Joint Reply Brief of ERCOT Market Participants (2/15/02), p. 13, last paragraph – p. 14, first paragraph. Tex-La participated in this reply brief. At the time this reply brief was filed, Tex-La was a movant to intervene; its motion to intervene had not yet been ruled on. Nevertheless, Tex-La has been treated like a party throughout this

that support only trivial payments for PCRs or payments at 80% of the TCR auction price, the Commission has the discretion to adopt the PCR pricing method supported by the Staff in its initial brief – tying the price to the corresponding TCR auction price – but at a lower price than recommended by Staff, 15% of the TCR auction price, rather than no less than 80% of the TCR auction price. The Commission’s adopting 15% of the TCR auction price for TCR pricing is similar to the Commission adopting a return on equity in a cost-of-service rate case that was not specifically supported by the record but was within the range supported by the record, which is a practice that has been upheld by the Supreme Court of Texas.⁷

Furthermore, as Judge Burns ruled in Order No. 16, Tex-La waived its right to request a hearing, as a condition to granting its late-filed motion to intervene.

II. TEX-LA’S ARGUMENTS IN OPPOSITION TO THE STIPULATION ARE MERITLESS

Tex-La uses its Pleading as a vehicle to reargue its opposition to changing the existing pricing of PCRs. Staff extensively addressed in its initial and reply briefs the need to eliminate PCRs or change the current pricing and other elements of PCRs, so there is no need to comprehensively address PCRs in this pleading.⁸ Nevertheless, Staff cannot resist briefly pointing out Tex-La’s narrow, self-interested attitude towards this issue.

docket pursuant to Commission Procedural Rule 22.104(c), which provides: “Persons who have filed motions to intervene shall have all the rights and obligations of a party pending the presiding officer’s ruling on the motion to intervene.” Staff pointed out in its initial brief that the current PCR pricing requires payment of only trivial amounts by PCR recipients to ERCOT, a point Tex-La admits in its pleading. See Commission Staff’s Initial Brief (1/25/02), p. 42, last paragraph – p. 43, first paragraph; Tex-La Pleading, p. 11, second-to-last paragraph (“[T]he PCR itself has been provided essentially free of charge.”)

⁷ *Railroad Commission of Texas v. Entex, Inc.*, 599 S.W.2d 292, 299 (Tex. 1980).

⁸ Commission Staff’s Initial Brief, p. 31-53; Commission Staff’s Reply Brief, p. 31-35.

Eligibility for PCRs is limited to certain generation resources that are remote from the service areas of the public power entities that are entitled to the resources' output. As pointed out in Staff's initial brief, as part of SB7, which provided for retail competition, wholesale transmission service was required to be 100% postage stamp priced, meaning that the rates for such service do not vary based on distance, which benefits those owning the output of remote generation facilities.⁹ Tex-La likes this change, which financially benefits it: "Prior to implementation of a postage stamp methodology in 1999, Tex-La paid "pancake"-style transmission rates for delivery of energy from the WTU control area and across the Texas Utilities (now, TXU/Oncor) control area."¹⁰ Tex-La then proceeds to illogically argue that this benefit to it from SB7 should entitle it to a benefit not provided for in SB7, essentially free congestion hedges (PCRs): "[T]he PCR itself had been provided essentially free of charge. Last year, Tex-La paid \$683.47 for the PCRs that it currently has."¹¹

Tex-La wants a free ride on congestion costs. However, any subsidy conferred to Tex-La and other PCR recipients will be borne by the other market participants, who will pass the cost of the PCR subsidy on to their retail customers.

Although Tex-La argues for a free ride in the form of PCRs, it appears that Tex-La is not even eligible for PCRs. The requirements for eligibility for PCRs include a requirement that the power causing congestion come from "a specific remote Generation Resource".¹² Tex-La indicates in its Pleading that its alleged eligibility for PCRs arises from a contract for power with WTU.¹³ Staff doubts that the power provided pursuant to this contract comes from "a specific

⁹ Commission Staff's Initial Brief, p. 50, first paragraph.

¹⁰ Tex-La Pleading, p. 11, third paragraph.

¹¹ Tex-La Pleading, p. 11, second-to-last paragraph.

¹² Protocols §7.5.6.

¹³ Tex-La Pleading, p. 11.

remote Generation Resource". Instead, the power likely comes from WTU's entire generation fleet, and possibly from any generation resource in AEP's ERCOT or SPP generation fleet or even power purchased by WTU and delivered to a point of delivery in WTU's service area. Questions such as this one as to which entities are eligible for PCRs is a major reason why Staff has recommended that a separate docket be established to resolve additional PCR issues.¹⁴

Based on the foregoing, Staff requests that the Commission reject the arguments in Tex-La's Pleading and make the price of PCRs equal to 15% of the corresponding TCR auction price, consistent with the Stipulation.

¹⁴ See DPL issue 15 (4/9/02 filing by Keith Rogas); Commission Staff's Reply to Comments on Decision Point List Issues (4/10/02), p. 6, fn. 18; Order No. 15, p. 2; 2/11/02 letter from Keith Rogas, third paragraph; Commission Staff's Initial Brief (1/25/02), p. 39.

Dated: November 8, 2002

Respectfully Submitted,

Thomas S. Hunter
Division Director - Legal and Enforcement Division

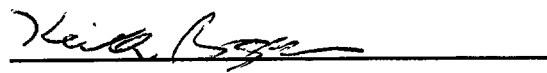


Keith Rogas
Director – Legal and Enforcement Division, Electric
Section
State Bar No. 00784867
(512) 936-7277 telephone
(512) 936-7268 fax
keith.rogas@puc.state.tx.us

Public Utility Commission of Texas
1701 North Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I, Keith Rogas, certify that copies of this document will be served on all parties on November 8, 2002, in accordance with Public Utility Commission of Texas Procedural Rule 22.74.



Keith Rogas