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RULEMAKING RELATED TO
RENEWABLE ENERGY
AMENDMENTS

§ PUBLIC UTILITY COMMISSION
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§ OF TEXAS

TEXAS INDUSTRIAL ENERGY CONSUMERS' COMMENTS ON THE PROPOSAL
FOR PUBLICATION OF NEW §25.174

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PUBLIC UTILITY COMMISSION
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Texas Industrial Energy Consumers ("TIEC") appreciates the opportunity to submit comments on the Staff Strawman relating to proposed new P.U.C. SUBST. R. 25.174. The implementation of the portions of Senate Bill 20 that address competitive renewable energy zones ("CREZs") is of great importance to TIEC members. It is imperative that the Commission establish a policy for that development of CREZs that is reasonable, comprehensive, and cost effective.

At the outset, it is important to remember that the ability to build and finance transmission investment is not infinite. It is not advisable nor feasible to "pave the sky with wire." In recognition of this fundamental fact, the Legislature has asked that the Commission develop CREZs in the most cost effective manner. This is sound public policy and consistent with this Commission's tradition of implementing programs that are designed to achieve the greatest benefit for the least amount of investment. *The ultimate promise of the CREZ initiative is to create sensible transmission expansion at a lower cost than would be accomplished through traditional, piecemeal transmission build out.* It was this promise that garnered ratepayer support for solving some of the issues relating to the construction of transmission for renewable generation development. However, without proper implementation the promise of a more sensible transmission program will not be fulfilled. The Commission should make appropriate changes to the draft rule to ensure that the CREZ goals are met and that the necessary infrastructure is procured in the most beneficial and efficient manner for ratepayers.

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I. Responses to Preamble Questions

1. *Financial commitments by generators.* Proposed subsection (b)(4)(A) allows generators to indicate interest in a potential CREZ by posting non-refundable deposits of different amounts at different stages. Are the amounts large enough to indicate a sufficient degree of commitment by a generator to assist the commission in designating CREZs and granting certificates of convenience and necessity for transmission lines related to CREZs? If not, how large should the requirement be?

In general, the proposed rule does not adequately address the statute's "financial commitment" standard. The rule lays out an array of options with no clear articulation of how the varying financial commitments will be evaluated. As such, the proposed rule misses an opportunity for the Commission to use these commitments to better judge cost-effectiveness. Simply put, there is no objective standard by which to evaluate commitment to one CREZ proposal over another. There needs to be a clear, uniform standard to evaluate financial commitment.

In addition, there is no value awarded to the customers from any of the suggested commitments. *The financial contribution by generators should be used to lower the amount of money that consumers have to pay for transmission.*

TIEC continues to believe that the first cut for a CREZ should rest with ERCOT, as articulated in 25.174(a). ERCOT would evaluate the relevant data in conjunction with the TDSPs and propose the "best" CREZ sites (using transmission expansion costs, ancillary service costs, and any other relevant costs, and calculated on a per MW of potential capacity basis). TIEC believes that once ERCOT makes its filing, an auction should be held where interested generation developers (including non-renewable generation developers) would offer cash deposits to reserve a certain amount of capacity on the expanded transmission for the CREZ. The aggregate of these deposits would determine the level of interest in a particular area and would assist in assessing whether a CREZ was a cost-effective option. Under this mechanism, once a CREZ was chosen, the dollars contributed by interested developers would be used to offset the cost of the transmission facilities and serve to lower the burden on customers. In return, the developers would receive transmission rights consistent with their contributions (a strike price could be set in order to determine appropriate rights). Cost effectiveness is then

measured in terms of a total costs to ratepayers, compared to expected capacity that will be developed.¹

Additionally, the rule should specify that the CREZ will only include the development of “hubs,” and that the generators will be responsible for additional facilities necessary to get to the hubs. This is the only way to ensure that a CREZ will be implemented in a cost effective manner. The Commission should not have to speculate as to additional costs that might be associated with a particular CREZ after its designation. Instead, it should be made clear that the CREZ costs will include the expanded hub (broadly speaking) but the costs to connect the generators to that hubs are the responsibility of the generators.

2. *Prioritization of dispatch.* Subsection (b)(4) provides for assigning dispatch priority to renewable generators located in a CREZ if they fulfill all financial requirements arising from that paragraph. Please explain why this provision is better or worse than Subsection (b)(3), which uses deposits reserved for the future purchase of congestion revenue rights. In particular, please comment on each alternative’s consistency with PURA Chapter 35 and ERCOT protocols.

From a financial standpoint, TIEC submits that the language of (b)(4) does not adequately capture the financial commitment test in PURA. The rule provides that the deposits from Stage 2 and 3 would ultimately be refunded to the developer upon completion of construction of a renewable energy resource within a CREZ. This refund provision does nothing to support the costs of developing a CREZ. As discussed in response to Question 1, the financial commitments should be designed to offset the costs of the CREZ facilities. The financial contribution by generators should be used to lower the amount of money that consumers have to pay for transmission.

From a practical standpoint, the assignment of “dispatch priority” within a CREZ has potential reliability issues. As ERCOT has reported, wind energy is not dispatchable, it is intermittent, and it has low value during peak demand periods.² Thus, guaranteeing priority

¹ Financial commitments to CREZs that are not chosen would be refunded.

² See *Wind Energy & Transmission Planning in the ERCOT Region*, Background Information for House Subcommittee on Renewables at 5 (Mar. 16, 2005), available at: <http://www.ercot.com/news/presentations/2006/WindEnergyTransmissi.pdf>. See also *Transmission Issues Associated with Renewable Energy in Texas*, Informal White Paper for the Texas Legislature, 2005. Available at: <http://www.ercot.com/news/presentations/2006/RenewablesTransmissi.pdf>.

dispatch simply may not be possible from a grid-management perspective. Further, such dispatch priority may be at odds with nodal market design, where dispatch priority is a function of market outcomes. As discussed in response to Question 1 above, TIEC suggests that the Commission adopt an alternative method of demonstrating financial commitment, which will better allocate transmission resources and provide additional benefits to consumers.

With respect to deposits for the purchase of future congestion revenue rights, TIEC does not have a clear enough understanding of how this alternative would effectively guarantee financial commitment on behalf of generators. Under the ERCOT Nodal Protocols, a CRR is a financial instrument that entitles the CRR owner to be charged or to receive compensation for congestion rents during periods of congestion in the day-ahead or real-time market. “CRRs do not represent a right to receive, or obligation to deliver, physical energy.”³ TIEC submits that allowing the purchase of CRRs does not demonstrate true financial commitment to the development of a CREZ. Similar to the priority dispatch system in subsection (b)(4), the CRR provisions of (b)(3) allows the recovery of a “financial commitment” without any contribution to the construction of CREZ facilities. While loads may ultimately receive the benefit of the allocation of net CRR revenue to QSEs on a load-ratio share basis, that indirect benefit does not mitigate the direct costs of the transmission facilities needed to generators to serve the load. Customers should not be left to bear the entirety of the costs associated with building the CREZ facilities.

Both alternatives raise questions when considering the rule’s consistency with PURA Subchapter A and the ERCOT Protocols. Subchapter A of Chapter 35 relates to competition and transmission access in the wholesale market. These provisions are generally known as the “open access” provisions and govern the relationship between generators and transmission service providers. Specifically, PURA § 35.004 (b) states:

The Commission shall ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service for qualifying facilities, exempt wholesale generators, power marketers, power generation companies, retail electric providers, and other electric utilities or transmission and distribution utilities.

³ ERCOT Nodal Protocols 7.1(1).

Both the “dispatch priority” provision of subsection (b)(4) and the CRR provision of subsection (b)(3) are limited to participation by developers of renewable energy and therefore arguably violate the “open access” requirement. Additionally, the provisions in subsection (c)(3), which states that transmission service to new non-renewable generation facilities is “in addition to” any CREZ facilities, also suggest that the rule favors one type of generation over another. As currently written, the rule appears to improperly exclude non-renewable resources from participating in a CREZ. This is contrary to the provisions of PURA Chapter 35, which require that all generation facilities have nondiscriminatory access to transmission facilities.

TIEC does not believe that the Legislature intended a CREZ to be developed exclusively for renewable generation. Indeed, testimony before the Senate Business and Commerce Committee during the discussion of S.B. 533, the precursor to S.B. 20, revealed that more than one type of generation resource would be available in a particular CREZ.⁴ Moreover, Senator Fraser recognized that CREZ facilities could assist in alleviating certain problems with the siting of fossil-fuel facilities in non-attainment zones.⁵ Additionally, it is important to locate controllable generation in the same area as wind to provide the needed ancillary services to compensate for the variability of the wind resource. Thus, it is important that the rule avoid a single-generation focus and recognize the potential for many types of resources to locate within a CREZ for both reliability and siting concerns. Doing so will maximize the value of this transmission investment and is an essential element in achieving cheaper infrastructure costs through better planning.

⁴ As Chairman Hudson testified: “[t]his particular transmission wire wouldn’t be exclusively to be utilized for wind generation.” Senate Business and Commerce Committee Meeting, 79th Leg. R.S., Public Hearing on S.B. 533, (Apr. 5, 2005) (available at <http://www.senate.state.tx.us/avarchive/senate.php?year=2005&mon=4&start=150> (part II)).

⁵ “The long-range plan for Texas . . . if we’ve got problems with pollution and attainment, that we’re going to have to site plants somewhere else and if we’re going to do that we’re going to have to have transmission facilities to get them in. . . .” Senate Business and Commerce Committee Meeting, 79th Leg. R.S., Public Hearing on S.B. 533, (Apr. 5, 2005) (available at <http://www.senate.state.tx.us/avarchive/senate.php?year=2005&mon=4&start=150> (part II)).

3. ***Timeliness of completing upgrades.*** Subsection (a)(5)(E) provides that in its final CREZ order, the commission may impose reporting requirements and other measures to ensure timely completion of CCN applications and construction upgrades. What specific measures would be appropriate for the commission to consider in a final order, and should they be specified in this rule?

TIEC offers no response to the question at this time, but reserves the right to address other parties' comments in its reply comments.

4. ***Length of process.*** The proposed rule establishes deadlines for a final CREZ order, and for utilities to file a CCN application. Please identify steps in the CREZ process that can be shortened or consolidated.

Additional guidance regarding the length of process. Are additional provisions that the Commission should consider within its statutory authorization that would allow for expedited CREZ designation and implementation? For example, one factor allowing expedited treatment may be extensive transmission planning work already performed by the electric grid operator due to existing transmission congestion. Another may be whether renewable energy generation owners have demonstrated a level of *existing* financial commitment significant enough to obviate the need to examine future financial commitments through the 60-day processes described in the proposed rule, recognizing that transmission export capacity would still need to be addressed in the CREZ cases. Finally, would such factors justify severing certain candidate zones into a separate fast-tracked docket, reserving the longer processes to the docket where the choices require more extensive review and planning?

TIEC observes that the rule as designed may encourage a excessive litigation through highly contested proceedings and "food fights" among generators trying to get their particular region sited over others. As discussed above, an alternative approach would be to more fully develop the planning aspects of the CREZ zones through ERCOT (rather than immediately initiating a contested-case proceeding upon receiving ERCOT's report). Expanding the planning process through ERCOT would include obtaining an up-front financial commitment through an auction or other similar mechanism, which could diminish the time required to process the cases at the Commission (as the Commission would have concrete measures of commitment and firmer estimates of costs/capacity). Further, the Commission could consider several CREZ designations in one proceeding, starting with the "low hanging fruit." TIEC submits that such a proceeding would be a more efficient and timely way to achieve the transmission goals articulated in these sections of PURA. It would provide the Commission with a more effective way to compare the different options because there would be more than one option in play.

II. Specific Comments Regarding Proposed Rule Language

§25.174(a)(4)

The proposed rule does not contain adequate provisions to ensure that a particular CREZ is developed in the most beneficial and cost-effective requirement manner. Specifically, PURA § 39.904(g)(2) provides that the plan to construct transmission capacity to deliver the renewable energy output from a CREZ shall be “*in a manner that is most beneficial and cost-effective to the customers.*”⁶ The proposed rule states that when considering an application for a CREZ that the Commission shall look to the “cost of constructing the transmission capacity” and the “benefits of renewable energy.” These criteria however, do not satisfy the statutory requirement.

The proposed language fails to provide any criteria for how the costs are to be analyzed and how different CREZ proposals are to be differentiated. Further, the proposed rule improperly creates an analysis of the benefits of renewable energy, not of the most cost-effective and beneficial way to construct transmission capacity *from the consumers’ perspective*. The Commission must develop an objective way to measure the cost-effectiveness of each CREZ. TIEC believes that first and foremost, *the Commission must consider the costs of transmission per MW of potential generation in order to determine which CREZs have the most benefit and are the most cost-effective*. Without such a firm standard, the CREZ promise will go unfulfilled. The CREZ options must be evaluated competitively and consumers should receive the benefit of offsetting financial contributions to transmission infrastructure.

§25.174(d)

This section of the rule is presumably designed to address the “piling on” problem that arises when multiple generators locate within a small geographic area to capitalize on available transmission. This problem is exacerbated when the development is unknown and unexpected at the time that transmission infrastructure is planned. While subsection (d) as drafted may accomplish the goal, TIEC believes that these provisions should not be limited to renewable generators and are unnecessary if the Commission adopts a broader auction scheme as described above. Under the approach articulated previously, generation developers would bid on the designation of a particular CREZ in exchange for transmission rights. Those bids would offset

⁶ PURA § 39.904(g)(2) (emphasis added).

infrastructure costs and entitle the developer to access on the expanded CREZ lines. This would give the Commission better information, offset infrastructure costs, and would alleviate the need to reevaluate developer interest during the CCN process.

III. Conclusion

TIEC appreciates the opportunity to submit these comments and looks forward to working with Staff in the development of a balanced rule that reasonably implements the CREZ provisions of Senate Bill 20.



ANDREWS KURTH LLP

Phillip Oldham
State Bar No. 00794392
Tammy Cooper
State Bar No. 00796401
111 Congress Avenue, Suite 1700
Austin, Texas 78701
(512) 320-9200
(512) 320-9292 FAX

ATTORNEYS FOR
TEXAS INDUSTRIAL ENERGY CONSUMERS