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PROJECT NO. 34560

RULEMAKING PROCEEDING TO
AMEND PUC SUBSTANTIVE RULES
RELATING TO SELECTION OF
TRANSMISSION SERVICE
PROVIDERS RELATED TO
COMPETITIVE RENEWABLE
ENERGY ZONES AND OTHER
SPECIAL PROJECTS

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REPLY COMMENTS OF LUMINANT ENERGY COMPANY LLC AND LUMINANT
GENERATION COMPANY LLC

Luminant Energy Company LLC and Luminant Generation Company LLC (collectively "Luminant") respectfully submit these reply comments to proposed Substantive Rule 25.216, regarding the selection of Transmission Service Providers (TSPs) to build transmission related to the Competitive Renewable Energy Zones (CREZ). After reviewing the comments filed by other participants in this project, Luminant respectfully offers the following: (1) as currently drafted, proposed Substantive Rule 25.216 does not provide a clear mechanism by which the Commission will select TSPs; (2) performance-based incentives should be deleted from proposed Substantive Rule 25.216(g); and (3) the CCN revocation provision contained in proposed Substantive Rule 25.216(g)(5) is unnecessary, is of questionable authority, and provides great uncertainty for wind developers and consumers. This reply supplements the concerns raised in Luminant's original comments and, where applicable, concurs with comments filed by other parties in this project.

I. UNCLEAR MECHANISM FOR SELECTION OF TSPs

Luminant continues to be concerned that the draft rule does not provide a clear mechanism by which the Commission will select TSPs to construct the transmission needed to serve the CREZs. Neither the type of procedure (*i.e.*, contested case or other proceeding) nor the criteria to be used by the Commission in selecting designated TSPs are adequately described by the proposed rule. This lack of clarity concerns Luminant because it is not apparent whether interested persons will have the opportunity to review or test the qualifications of applicant TSPs. Proposed Substantive Rule 25.216(f) provides, in relevant part, that the Commission may

select one or more Qualified TSPs to construct, operate, and maintain each CTP Facility with the objective of providing the needed CTP Facilities in a manner that is most beneficial and cost effective for customers.¹ While the proposed rule sets forth several specific criteria to be considered in the qualification of TSPs,² there appears to be little guidance on the specific criteria or procedure the Commission will use to ultimately select Designated TSPs.

The Administrative Procedures Act (APA) expressly provides that a state agency must adopt rules of practice stating the nature and requirements of all available formal and informal procedures.³ Luminant supports the suggestions made by Airtricity, Inc. and PPM Energy, Inc. that the Commission use settlement conferences in the context of a contested case proceeding as the mechanism that represents the best balance of the competing interests of expeditious resolution and appropriate review of qualifications.⁴ However, if the Commission determines that the selection of TSPs for CREZ transmission will be conducted in a proceeding that is not a contested case, then at the least proposed Substantive Rule 25.216 needs to be revised to describe the specific procedure that will be used by the Commission in its selection process. Similarly, if the TSP qualification and selection process will be conducted as contested cases, then Luminant respectfully requests that more guidance be provided in the proposed rule with respect to the specific criteria the Commission will utilize in evaluating the merits of competing TSP proposals. If such revisions are not made to the existing proposed rule, Luminant fears that the selection process would be subject to successful challenge. Such an appeal process could result in lengthy delays to the construction of CREZ transmission, which would hurt generation projects that otherwise would be ready to go to market.

¹ *Rulemaking Proceeding to Amend PUC Substantive Rules Relating to Selection of Transmission Service Providers Related to Competitive Renewable Energy Zones and Other Special Projects*, Project No. 34560, Proposal for Publication at 9 (Dec. 10, 2007).

² *Id.* at 7-9.

³ Administrative Procedures Act, TEX. GOV'T CODE ANN. § 2001.004(1) (Vernon 2000 & Supp. 2005) (APA).

⁴ While Airtricity and PPM advocate the use of an "expedited" contested case process, Luminant is unclear as to exactly what form that might take. Luminant is not opposed to a traditional contested case process for selection of TSPs but is interested in understanding more about the suggestion for an expedited proceeding. See Joint Comments of Airtricity, Inc. and PPM Energy, Inc. on Proposed § 25.216 at 5 (Jan. 22, 2008).

II. PERFORMANCE-BASED INCENTIVES SHOULD BE DELETED FROM THE PROPOSED RULE

In its original comments, Luminant expressed concern about the performance-based incentives set forth in the draft rule. Luminant reiterates those concerns here and adds that the CCN revocation process contemplated by subsection (g) in proposed Substantive Rule 25.216 should be omitted. Luminant concurs, generally, with the comments filed by Airtricity, Inc. and PPM, Energy, Inc., as well as other parties, that the performance-based incentives contained in the draft rule are not appropriate.⁵ Because the Commission may consider the actions of designated TSPs relating to the construction and operation of CREZ transmission in the Commission's evaluation of the proper TCOS for each TSP, the performance-based incentives contained in the draft rule are unnecessary.

III. CCN REVOCATION CAUSES TOO MUCH UNCERTAINTY

Of additional concern to Luminant is the CCN revocation provision contained in proposed Substantive Rule 25.216(g)(5), which provides that the Commission may revoke the Designated TSP's CCN for a project for failure to meet the estimated cumulative cost or approved schedule. The possibility of CCN revocation creates great uncertainty for wind developers and, ultimately, consumers. As Substantive Rule 25.174(d)(1) provides that certain developers must take transmission service in the CREZ no later than one (1) year after the TSP notifies the developer that the transmission system can accommodate the developer's renewable energy facility, developers must take certain significant steps with respect to their projects while CREZ transmission is being built. In attempting to properly time the in-service date for their wind facilities, developers need a high sense of certainty with respect to the completion of CREZ transmission. If the Commission has the ability to revoke a TSP's CCN for a CREZ transmission project that is experiencing a cost or scheduling overrun, this would inject added risk and potential delay to the construction process.

It is assumed that after revoking a TSP's CCN, the Commission would select another TSP to complete the defaulting TSP's transmission project. While a wind developer may be able

⁵ See *id.* at 4.

to reasonably estimate the timeline for a designated TSP to complete a CREZ transmission project already underway, attempting to estimate the time it will take the Commission to select another TSP to finish an existing project, as well as estimate how long the new TSP will take to complete an existing project, would be significantly more difficult. As a result, wind developers would be unsure of in-service dates, and consumers would be left wondering what happened to the wind energy they were promised. Accordingly, proposed Substantive Rule 25.216(g)(5) creates great uncertainty for both generators and consumers and should be omitted.

Further, as discussed in the comments submitted by CenterPoint Energy Houston Electric, LLC, a question exists as to whether PURA⁶ provides the Commission with the authority to revoke a CCN in the manner which appears to be contemplated by the proposed rule. PURA § 37.059(a) provides, in relevant part, that the Commission may revoke a CCN after notice and hearing if the Commission finds that the certificate holder has never provided or is no longer providing service in all or part of the certificated area. However, subsection (g)(5) of proposed Substantive Rule 25.216 provides that the Commission may revoke the Designated TSP's CCN for the project for failure to meet the estimated cumulative cost or approved schedule. Luminant believes sufficient questions exist as to the Commission's authority to implement proposed Substantive Rule 25.216(g)(5), which provide another reasonable basis for deleting (g)(5) from the text of the proposed rule.

IV. CONCLUSION

Luminant requests that these reply comments be incorporated into any Commission-approved final version of proposed Substantive Rule 25.216 and looks forward to the opportunity to participate in a specifically-defined TSP-selection process.

⁶ Public Utility Regulatory Act (PURA), TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 2007).

Respectfully submitted,

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