



Control Number: 34577



Item Number: 198

Addendum StartPage: 0

PROJECT NO. 34577

PROCEEDING TO DEVELOP
POLICY RELATING TO EXCESS
DEVELOPMENT IN COMPETITIVE
RENEWABLE ENERGY ZONES

§
§
§
§
§

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

**COMMENTS OF INVENERGY WIND NORTH AMERICA LLC TO
PROPOSED AMENDMENTS TO §25.174**

TABLE OF CONTENTS

	Page
I. Invenergy's Interest in Texas	1
II. Comments to Amendment to PUC Substantive Rule §25.174.	2
A. Suggested Modifications to Subsection (d)(4).	2
B. Suggested Modifications to Subsection (d)(5)	3
C. Suggested Change to Subsection (d)(5)(B) and (d)(5)(C)(iv).	3
D. Suggested Addition to Subsection (d)(5).	4
E. Suggested modifications to Subsection (e).	4
III. Invenergy's Responses to Questions Posed in Preamble.	6
And Additional Issues for Consideration	
A. A requirement that renewable energy developers.	6
be required to post a security deposit should not be added to Subsection (d)(5) of the Proposed Amendment.	
B. Determination of Amount.	6
C. Procedures Governing the Posting of the Deposit.	7
D. TSPs Should Hold Any Required Deposits.	7
E. Event that Should Trigger Return of the Deposits.	8
F. Additional Questions to be Answered in the Event a Collateral Requirement is Implemented.	8
IV. Conclusion.	8

RECEIVED
PUBLIC UTILITY COMMISSION
FILED
2012-06-11 4:54 PM
AUSTIN

PROJECT NO. 34577

**PROCEEDING TO DEVELOP
POLICY RELATING TO EXCESS
DEVELOPMENT IN COMPETITIVE
RENEWABLE ENERGY ZONES**

§
§
§
§
§

**BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS**

**COMMENTS OF INVENERGY WIND NORTH AMERICA LLC TO
PROPOSED AMENDMENTS TO §25.174**

Invenergy Wind North America LLC (“Invenergy”) respectfully offers the following comments in response the Texas Public Utility Commission (“PUC” or “Commission”) staff’s request for public comments to its proposed amendments to P.U.C. Subst. R. §25.174 (“Proposed Amendment”) and respectfully offers the comments and responses to questions contained herein.

I.

Invenergy’s Interest in Texas

Invenergy is the fourth largest owner and operator of wind projects in ERCOT and the fifth largest wind operator in the country.¹ Among its operational projects is the McAdoo Wind Farm, the largest Panhandle wind project connected to the ERCOT grid. In its financial commitment testimony filed in PUC Docket 33672 (the “CREZ Docket”) Invenergy supported over 3,000 megawatts (MWs) of wind generated electricity to use CREZ transmission facilities. As such, Invenergy has a direct and substantial interest in the Proposed Amendment.

The Proposed Amendment represents a critical step in completing the Texas legislature’s vision for Texas wind when it passed Senate Bill 20 in 2005.² Staff’s revisions to §25.174 recognize the need to address the outstanding issues related to financial commitment

¹ American Wind Energy Association Annual Wind Industry Report, (2008) p.11. Source: <http://www.awea.org/publications/reports/AWEA-Annual-Wind-Report-2009.pdf>

² Senate Bill 20, 79th Leg., 1st C.S. (2005).

and excess development. The Proposed Amendment appropriately acknowledges the investment already made in the McCamey, Central and Central West CREZs in the form of existing generation and addresses the need to show financial commitment for Panhandle A and B.

Although many issues are resolved by the Proposed Amendment Invenergy encourages the PUC to take two additional steps. The first is to provide itself with adequate flexibility to ensure that the Panhandle CREZs or specific CCNs related to the Panhandle CREZs are able to move forward. The second is to identify which generators in each CREZ will be eligible for dispatch priority in the event such a mechanism becomes available. Invenergy believes identifying those who are and are not eligible for dispatch priority will discourage excess development in the CREZs

II.

Comments to Amendments to P.U.C. Substantive Rule §25.174

Invenergy's redline of the Proposed Amendment is attached hereto as Exhibit A. What follows is an explanation of Invenergy's substantive comments to the Proposed Amendment. The non-substantive changes made in Exhibit A are strictly for clarity and consistency and are not discussed herein.

A. Suggested modifications to Subsection (d)(4)

Subsection (d)(4) of the Proposed Amendment requires that the Commission determine whether there is adequate financial commitment to support the transmission facilities serving Panhandle A and B. Under the Proposed Amendment, in the event the Commission determines either Panhandle A or B does not have the requisite showing of financial commitment, the Commission shall order that the CCNs for that CREZ not be filed. Rather than allowing a CREZ to fail in its entirety, Invenergy suggests the Commission establish a back-up procedure that allows CCNs that are supported by adequate financial commitment to move forward even if there is inadequate commitment for the CREZ as a whole. With its change Invenergy seeks to

avoid a situation wherein a CREZ fails even though there are existing and proposed projects located in a discrete part of the CREZ that provide financial commitment for certain transmission upgrades but other portions of the CREZ are still too tentative to justify moving forward. In such a circumstance, the grant of certain CCNs would allow those more mature projects to proceed on their path to completion rather than continue to languish without transmission. Invenergy believes if such a situation exists, the Commission will become aware of it during its review of the level of financial commitment for the CREZ as a whole.

B. Suggested Modifications to Subsection (d)(5)

The Proposed Amendment accurately captures PURA §39.904(g)(3) which does not require the posting of collateral but instead calls on the Commission consider the level of *financial commitment* by generators in each CREZ.³ The criteria set forth in each subsection (d)(5) Tier provides objective project measures for the Commission to evaluate and recognize the strength of existing generation and, where appropriate, seeks additional assurances. Invenergy respectfully suggests two modifications to Subsection (d)(5).

C. Suggested Change to Subsection (d)(5)(B)(iv) and(d)(5)(C)(iv)

Subsection (d)(5)(B)(iv) and (d)(5)(C)(iv) indicate a generator will represent site control through the “purchase of surface rights to land”. This language suggests a generator must have purchased the real property on which it intends to build its wind project. Traditionally, wind generators do not purchase the property but instead obtain site control for a project using a variety of legal instruments including lease agreements, option agreements and occasionally purchase agreements. The modifications to the Proposed Amendment recognize this approach to wind development. Additionally, Invenergy recommends using the presumptive conversion factor applied by PJM to show site control; a minimum of 3 acres per MW for wind turbines in a single line or 10 acres per MW for a site consisting of wind units distributed over an area.⁴

³ P.U.R.A., Tex. Util. Code §39.904(g)(3) (Vernon 2007 & Supp. 2008).

⁴ See PJM Manual 14A, Generation and Transmission Interconnection Process, at 10. Source: www.pjm.com/documents/~media/documents/manuals/m14a.ashx.

D. Suggested Addition to Subsection (d)(5)

As noted above, the Tiers of financial commitment in the Proposed Amendment provide objective criteria for the Commission to evaluate. The Commission, however, should retain the discretion to consider the following factors in the event Panhandle A or B fulfill substantially all of the criteria contained in subsection (d)(5) the Proposed Amendment. The additional factors are: i) the number of proposed MWs supported by a developer that has operational wind projects in ERCOT; ii) whether the proposed MWs are for an expansion of an existing project; and iii) the level of investment already made in the proposed wind project. The first factor demonstrates the developer's history and experience in the ERCOT market and is a clear indication of that developer's likelihood for success. The second factor acknowledges that a subsequent phase of an existing project is more likely to be built because it benefits from: i) the existing relationships with local officials and landowners in the county, ii) shared infrastructure and iii) information gathered in the development and construction of prior phases. Such information specifically includes wind studies, environmental reports, avian studies, threatened and endangered species studies and determinations regarding jurisdictional waters of the United States, as applicable, which typically provide developers with confidence that an expansion in the same general area will minimize negative environmental impacts. The third factor reflects the developer's commitment to the proposed project. If after consideration of the above described additional factors the Commission is satisfied that the level of financial commitment is sufficient, it could then approve the filing of all, or a part, of the CCN applications for that CREZ. Invenenergy believes, this additional criteria gives the Commission more flexibility in the event a CREZ falls just short of the subsection (d)(5) criteria.

E. Suggested Modifications to Subsection (e)

Subsection (e) of the Proposed Amendment allows for the initiation of a proceeding to consider dispatch priorities if the Commission determines SCED is inefficient to resolve congestion caused by excess development. The Proposed Amendment only allows the Commission to address excess development after it has already occurred. A clear policy going forward on who is eligible for dispatch priority and which dispatch priority mechanism will be

used would provide the appropriate signals to avoid development in excess of the Scenario 2 upgrades from ever occurring. It would also provide developers who are not eligible to receive dispatch priority with notice of the implications of building. Unless the Commission takes this step now it may lose the opportunity to prevent overbuilding in the CREZ. For the foregoing reasons, the Commission should decide who is eligible for dispatch priority prior the filing of the first CCN for a Panhandle transmission facility.

In the event the Commission decides to implement a disincentive for excess development for any CREZ, either as a part of this proceeding or in a subsequent proceeding, it should provide the same dispatch priority to both existing and proposed projects in all CREZs. Wind development that exceeds the transmission capacity provided by Scenario 2 has the same implications for all projects in all CREZs and dispatch priority should be equally enjoyed.

As noted below, there are still several outstanding issues related to collateral postings and dispatch priority. If the Commission determines that eligibility for dispatch priority is tied to the posting of collateral, generators must have a strong understanding of which mechanism will be utilized and what the relative benefits of the mechanism are. Without such an understanding, it will be hard for generators to make the business decision of posting collateral.

Among the proposals made in this rulemaking Invenergy has determined that a Congestion Revenue Right ("CRR") is the best option for providing a disincentive to piling on. CRRs do not interfere with the dispatch of lower cost resources while providing financial assurances to investors concerned about the loss of production tax credits and renewable energy credits due to congestion. CRRs may be used in the nodal market without requiring changes to the nodal design system. CRRs can also be implemented in the zonal market, as a template already exists in the form of transmission congestion rights. In addition, CRRs could be used in conjunction with existing or new protocols to prohibit backing down of nuclear generation and to safeguard against any demonstrated adverse reliability impact arising from low load/high wind conditions.

III.

Invenergy's Responses to Questions Posed in Preamble and Additional Issues for Consideration

A. A requirement that renewable energy developers be required to post a security deposit should not be added to Subsection (d)(5) of the Proposed Amendment.

Renewable energy developers should not be required to post collateral. Building a wind project requires major capital investments prior to and during construction. A security deposit will tie up capital needed to build projects. Additionally, a collateral requirement places an undue burden on CREZ developers. The Open Access Tariff prevents the PUC from limiting physical connection to the new CREZ lines, therefore, any developer may connect to the lines after they are constructed without having to post collateral. Consequently, to avoid discrimination in the event there is a collateral requirement, Invenergy proposes that any generator, renewable or conventional, be required to make the same collateral deposit, if one is imposed on CREZ developers, for any project that connects to a CREZ line within ten years of the completion of the CREZ line it wishes to use. This uniform collateral requirement will discourage generators from waiting to express their support for lines in order to escape the collateral requirement.

If the Commission implements a security deposit, it should be added as a requirement that complements Tier 3. Invenergy recommends the deposit be a per megawatt amount that is required for only those MWs that cannot otherwise fulfill the criteria listed in Tier 3. If, for example, of the 3,191 MWs planned for Panhandle A only 2,000 MW can fulfill the Tier 3 criteria, collateral would then be required to support the remaining 1,191 MWs.

B. Determination of Amount.

Invenergy suggests the collateral amounts be calculated in accordance with the procedures outlined in the Joints Comments filed by Invenergy, E.ON Climate and Renewables North America, Inc., Iberdrola Renewables Inc. and Edison Mission Energy on March 24,

2008.⁵ Without restating those comments in their entirety here, Invenergy again supports not requiring a collateral posting from existing generation or from proposed generation which is supported by a letter of credit already posted with a TSP for a CREZ development project for which there is a signed interconnection agreement. Each eligible CREZ developer must post collateral in an amount that supports the developer's current planned MW capacity for its CREZ projects. Invenergy suggests the amount be between \$5,000 to \$10,000 per MW. Regardless of the amount and method selected by the Commission, the need for certainty is critical so developers can budget for the amounts required for posting.

C. Procedures Governing the Posting of the Deposit.

Prior to the posting of any deposits, the Commission will have to determine whether all willing generators may post collateral or if it will require a showing of eligibility in order to post. Invenergy suggests that all developers listed in the CREZ Order that filed financial commitment evidence in the CREZ designation proceeding be eligible to post. In addition a developer that steps into the shoes of a defaulting developer⁶ should also be eligible to post. Rather than have developers post their total required collateral all at once deposits should be made in tranches with 25% of the total deposit made within 45 days of the filing of the first CCN for the CREZ with subsequent 25% deposits made at six month intervals.

D. TSPs Should Hold Any Required Deposits.

Because generators presently post a security deposit with the applicable TSP when signing an interconnection agreement a posting procedure is already in place and deposits should therefore be posted with the TSP(s) designated to build the transmission facilities to connect the generator.

⁵ Interchange item No. 138 in Docket No. 34577.

⁶ Procedures which govern the stepping into the shoes of a defaulting developer should be included in the Proposed Amendment should the Commission decide to require collateral.

E. Event that Should Trigger Return of the Deposits.

The deposits should be returned on the date the generator signs its interconnection generation agreement with the applicable TSP.

D. Additional Questions to be Answered in the Event a Collateral Requirement is Implemented.

In the event a collateral requirement is implemented Invenenergy believes the Proposed Amendment should also address the following issues:

- Who is eligible to post?
- Will only generators who post collateral be entitled to receive dispatch priority? [[this assumes the Southern CREZs will not get DP and is something to consider if DP is given not if collateral is required]]
- How many MWs may a generator post for, and will that determination be made?
- Will generators be required to post on a CREZ or CCN basis?
- When will the deposits be due and what forms of collateral will be accepted?

IV.

Conclusion

Invenenergy appreciates both Staff's work on the Proposed Amendment and the opportunity to offer its comments. Invenenergy's supports Staff's Proposed Amendment and looks forward to further participation in this proceeding.

Respectfully submitted,

Lisa Chavarria
State Bar No. 24006987
Stahl, Bernal & Davies, L.L.P.
7320 N. MoPac, Suite 211
Austin, Texas 78731
Phone: 512-652-2947
Fax: 512-346-2712
lisa@sbaustinlaw.com

A handwritten signature in black ink, appearing to read "Lisa", followed by a long, horizontal, wavy line that extends to the right.

**ATTORNEY FOR
INVENERGY WIND NORTH AMERICA LLC**

Exhibit A

(d) Certificates of convenience and necessity. No later than one year after an order by the commission designating a CREZ, the TSP or TSPs selected to provide transmission service in or to a CREZ shall file applications for all required certificates of convenience and necessity (CCNs) for transmission facilities identified ~~by the commission~~ in the final order issued in Docket 33672 (the "CREZ Order"). ~~as most beneficial and cost-effective to the customers.~~ The commission may allow additional time for a TSP to file an application upon a showing of good cause by the TSP. The commission may establish a filing schedule if a CREZ order requires numerous CCN applications.

- (1) A CCN application for a transmission project intended to serve a CREZ need not address the criteria in PURA §37.056(c)(1) and (2).
- (2) Using the criteria outlined in subsection (d)(5)(A)-(C) below ("Financial Commitment Criteria") the Commission shall determine whether the Financial Commitment Criteria has been satisfied for each CREZ. ~~In evaluating the CCN applications, the commission shall consider the level of financial commitment by renewable generators. Existing generation and proposed generation under construction in~~ for the McCamey, Central, and Central West CREZs approved in the CREZ Order approved is hereby deemed to satisfy the Financial Commitment Criteria requirement for approval of CCN applications for transmission facilities approved by the commission related to those zones.
- (3) The TSP may propose modifications to the transmission improvements described in the CREZ Order if such improvements would reduce the cost of transmission or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate. The commission may direct ERCOT to review modifications proposed by the TSP.

- (4) Notwithstanding paragraph (2) of this subsection, ~~for the Panhandle A and Panhandle B CREZs approved by the commission in Docket Number 33672~~ commission staff shall initiate one or more proceedings ~~for the commission to~~ determine whether Panhandle A and Panhandle B (as defined in the CREZ Order) fulfill the Financial Commitment Criteria, the level of financial commitment by renewable generators. If the commission determines that ~~the financial commitments for the Panhandle A or B CREZ~~ meet the Financial Commitment Criteria in accordance with ~~satisfy~~ paragraph (5)(A)-(C) of this subsection, the commission shall process the CCN applications for transmission facilities related to that CREZ in accordance with this section and 25.101 of this title, (relating to Certification Criteria). If the commission determines that ~~the financial commitments for~~ Financial Commitment Criteria for one of these CREZs does ~~do~~ not satisfy paragraph (5)(A)-(C) of this subsection then the commission shall order that CCN applications for CREZ transmission facilities related to that CREZ not be filed and the Commission shall initiate a proceeding to evaluate whether any of the CCNs for that CREZ fulfill the Financial Commitment Criteria ("CREZ CCN Proceeding"). During the CREZ CCN Proceeding the Commission shall apply the Financial Commitment Criteria to select CCN(s) to determine whether there is adequate financial commitment to support such CCN(s). If a CCN meets the Financial Commitment Criteria, the commission shall process the CCN application in accordance with this section and 25.101 of this title. In the event a CREZ fulfills substantially all of the Financial Commitment Criteria then the commission shall initiate a proceeding which considers the criteria listed in (5)(E) of this subsection ("Additional Criteria Proceeding"). During Additional Criteria Proceeding, the Commission shall apply the criteria listed in (5)(E) of this subsection and if it finds the CREZ meets the additional criteria it shall process the CCN applications for transmission facilities related to that CREZ in accordance with this section and 25.101 of this title. If at a later date the commission determines, in another proceeding initiated pursuant to this paragraph that the Financial Commitment

~~Criteria paragraph (5) of this subsection~~ has been satisfied, the commission shall establish a new filing schedule for the applications.

- (5) The commission will permit a CCN application to proceed if it concludes that the level of financial commitments to use the ~~for new~~ CREZ generation capacity made by renewable generators for the relevant CREZ meets or exceeds one of the Tier standards in this paragraph. Within a tier, an existing or planned renewable generation project cannot be counted more than once.
- (A) The Tier 1 financial commitment threshold will be satisfied if the sum of generating capacity from the following meets or exceeds 50% of the generating capacity for the CREZ as ordered by the commission:
- (i) existing generation in the CREZ; and
 - (ii) generation projects under construction that will be operational within 6 months in the CREZ.
- (B) The Tier 2 financial commitment threshold will be satisfied if the sum of generating capacity from the following meets or exceeds 75% of the generating capacity for the CREZ as ordered by the commission:
- (i) existing generation in the CREZ;
 - (ii) generation projects under construction that will be operational within 6 months in the CREZ;
 - (iii) planned projects with signed interconnection agreements with a transmission service provider that has been designated to construct and operate transmission facilities for the CREZ;
 - (iv) capacity represented by ~~purchases of~~ legal instruments that provide control of surface rights to land for at least 20 years in a CREZ as calculated at a presumptive conversion factor of 3 acres per MW for wind units in a single line or 10 acres per MW for a site consisting of wind units distributed over an area ~~60 acres per megawatt~~; and

- (v) capacity represented by a non-utility entity's contractual commitments to build and own transmission facilities dedicated to delivering the output of renewable energy resources in the CREZ to the transmission system of a transmission service provider that has been designated to operate transmission facilities for the CREZ.
- (C) The Tier 3 financial commitment threshold will be satisfied if the sum of generating capacity from the following meets or exceeds 100% of the generating capacity for the CREZ as ordered by the commission:
- (i) existing generation in the CREZ;
 - (ii) generation projects under construction that will be operational within 6 months in the CREZ;
 - (iii) planned projects with signed interconnection agreements with a transmission service provider that has been designated to construct and operate transmission facilities for the CREZ;
 - (iv) capacity represented by ~~purchases of~~ legal instruments that provide control of surface rights to land for at least 20 years in a CREZ as calculated at a presumptive conversion factor of 3 acres per MW for wind units in a single line or 10 acres per MW for a site consisting of wind units distributed over an area ~~60 acres per megawatt~~;
 - (v) capacity represented by a non-utility entity's contractual commitments to build and own transmission facilities dedicated to delivering the output of renewable energy resources in the CREZ to the transmission system of a transmission service provider that has been designated to operate transmission facilities for the CREZ; and
 - (vi) capacity represented by applications for interconnection agreements with a transmission service provider that has been designated to operate transmission facilities for the CREZ.

- (E) The criteria to be considered during the Additional Criteria Proceeding is:
- (i) the number of proposed MWs supported by a developer that has already constructed wind projects in ERCOT;
 - (ii) whether the proposed MWs are for an expansion of an existing project; and
 - (iii) the level of investment already made in the proposed wind project

- (e) **Excess development in a CREZ.** If the aggregate level of renewable energy capacity for which transmission service is requested for a CREZ exceeds the maximum level of renewable capacity specified in the CREZ ~~e~~Order, and if the commission determines that the security constrained economic dispatch mechanism used in the power region to establish a priority in the dispatch of CREZ resources is insufficient to resolve the congestion caused by excess development, the commission may initiate a proceeding and may consider limiting interconnection to and/or establishing dispatch priorities regarding the transmission system in the CREZ, and identifying the developers whose projects may interconnect to the transmission system in the CREZ under special protection schemes.

(5)