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CIELO WIND SERVICES, INC.
August 6, 2009

PROJECT NO. 34577

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

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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COMMENTS OF CIELO WIND SERVICES, INC.

COMES NOW Cielo Wind Services, Inc. ("Cielo") to present the following comments on the Commission's proposed amendments to Rule §25.174.

As a developer of wind powered renewable generation, and as a participant in this and related CREZ proceedings, Cielo applauds and supports the direction taken in the proposed amendments. This proposal appropriately and accurately recognizes that there has already been sufficient wind developer investment in the McCamey, West, and Central West competitive renewable energy zones to justify the transmission improvements related to those zones to be implemented according to the Commission's approved transmission plan. In addition, the proposed amendments establish a workable and meaningful procedure for assessment of the question whether there exists sufficient renewable energy development investment in the Panhandle A and B zones to justify the Commission's planned transmission improvements for those zones. In response to the question posed in the staff's proposal for publication, whether a requirement that renewable energy developers post a security deposit should be added to any Tier of the proposed three-Tier test to establish financial commitment in the Panhandle CREZs, it is Cielo's view that the evidentiary issues posed by the proposed amendments' tier system is sufficient to indicate genuine developer interest necessary to justify the contemplated

transmission improvements, and Cielo expects that the hearings will confirm the requisite interest and commitment. In addition, the Commission should keep in mind the fact that developers continue to be required to post deposits for construction of their own transmission interconnection facilities, and also that under the current financial circumstances any non-productive use of capital should be disfavored.

The proposed amendments implementing a procedure for assessment of developer commitment are workable as written, in Cielo's view. The following comments are offered in the hope that the comments may lead to additional clarity and simplicity.

With respect to paragraph 25.174(c)(5), it would simplify the evidentiary standard for each CREZ if the Commission would state in the rule a numerical value for the transmission capacity it has ordered for the Panhandle A and B CREZs. A numerical statement of the transmission capacity for each would clear up any possible confusion on that point and eliminate the question as a possible issue in the hearings to be held.

Paragraph 25.174(C)(5)(B)(iv) could be improved by recognition that a generation developer's acquisition of surface use rights may take many forms. For example, many, if not most surface rights arrangements are characterized as leases, not as purchases. Also, many leases have relatively short initial terms (e.g., five or ten years) which are extended for various additional terms by development milestones such as actual construction. It is not completely clear how such an agreement would be evaluated under the proposed language. Finally, the megawatt capacity of a particular tract is dependent upon several factors, including the land's topography in relation to the wind and the capacity of the turbines planned to be installed. It is probably useful to state a presumption, as the proposal does, but it would also be useful to add that the presumption can be varied with evidentiary support.

With respect to §25.174(e), Cielo recommends the deletion of this paragraph in its entirety. In the first place, as changed by the proposed amendments, the paragraph deals with events that have not yet occurred, and may never occur. As such, the paragraph describes what the Commission might do on a hypothetical state of facts, and is parallel to the sort of advisory opinion which the Commission, properly, has always refused to issue. This is simply not a proper subject for a Rule. Furthermore, as the Commission is well aware from the previous briefing on this issue, the parties interested in renewable generation are deeply divided on the question of the Commission's statutory power to enter an order which would compromise the open access mandate contained in PURA. Cielo, of course, is one among many arguing the Commission lacks that power. In addition, on a policy level, Cielo is confident that open access is the correct policy, regardless of legal arguments about the Commission's jurisdiction. Adoption of the proposed amendment could be viewed as an occasion to test in court the Commission's jurisdiction. Since the situation discussed is purely hypothetical at this point, it would be by far the better part of valor to leave the paragraph out.

Cielo appreciates the opportunity to provide the foregoing comments, and offers its encouragement to proceed with the adoption of amendments to the Rule.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Lawrence S. Smith", written over a horizontal line.

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