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P.U.C. PROJECT NO. 34577

**PROCEEDING TO ESTABLISH § PUBLIC UTILITY COMMISSION
POLICY RELATING TO EXCESS § OF
DEVELOPMENT IN COMPETITIVE §
RENEWABLE ENERGY ZONES § TEXAS**

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**AES WIND'S
COMMENTS ON THE PROPOSED AMENDMENTS TO § 25.174**

I. Introduction

AES Wind Generation, Inc. ("AES Wind") provides these comments in response to the Proposal for Publication of Amendments to P.U.C. SUBST. R. § 25.174 ("Proposal for Publication") filed by the Public Utility Commission of Texas (the "P.U.C." or the "Commission") on July 8, 2009. As stated previously, the issues at hand in this proceeding are complex and difficult.¹ Yet, the solutions sought in this rulemaking have important impacts on both Texas wind energy generators and the consumers of such energy.² AES Wind appreciates the opportunity to comment on the Commission's Proposal for Publication and offers the following:

II. Financial Commitment Demonstrated in Southern CREZs

The proposed amendments to P.U.C. SUBST. R. § 25.174 correctly state that existing wind energy generators located in the "southern" Competitive Renewable Energy Zones ("CREZs") have already demonstrated financial commitment sufficient for the approval of Certificate of Convenience and Necessity ("CCN") applications for

¹ See AES Wind's Additional Comments Prior to Workshop (March 24, 2009).

² These solutions must be balanced with the State's renewable energy goals, the Commission's stated policy strategies and objectives related to Electric Reliability Council of Texas ("ERCOT") grid operations and reliability functions, and the uncertainty and complexity of ERCOT's impending Nodal Market design.

transmission facilities related to the southern CREZs.³ The proposed amendments appropriately recognize the sizeable commitment already made by CREZ wind energy developers in these zones.

A. Sufficient Financial Commitment Already Established in Southern CREZs

Specifically, the Proposal for Publication provides that wind energy generators located in the three (3) "southern" CREZs - (1) the McCamey CREZ, (2) the Central CREZ, and (3) the Central West CREZ - have proven that wind generation development has occurred or will occur sufficient to use the transmission lines built to those CREZs. In other words, the amount of wind generation already developed in these CREZs and the amount of wind generation currently under development in these CREZs demonstrate sufficient financial commitment. Thus, developers in these CREZs will not be required to post collateral as contemplated in the original P.U.C. Substantive Rule.⁴

As the Commission itself states in the Proposal for Publication's cover memo, the best proof of financial commitment is what has been coined *steel in the ground*. AES Wind agrees with the Commission's assertion that "installed generating capacity and continuing construction of new generation are the best measures of wind-generator financial commitment."⁵ In fact, AES Wind has advocated continually for the exclusion of existing wind energy generators from any requirement to post collateral.⁶ Existing

³ Proposed P.U.C. SUBST. R. § 25.174(d)(2):

In evaluating the CCN applications, the commission shall consider the level of financial commitment by renewable generators. Existing generation and generation under construction in the McCamey, Central, and Central West CREZs approved by the commission in Docket Number 33672 satisfy the financial commitment requirement for approval of CCN applications for transmission facilities approved by the commission related to those zones.

⁴ Current P.U.C. SUBST. R. § 25.174(c)(6).

⁵ Proposal for Publication at 1-2 (July 18, 2009).

⁶ See AES Wind's Additional Comments Prior to Workshop (March 24, 2009); see also AES Wind's Additional Comments and Strawman Concepts (Feb. 27, 2009).

wind energy generators have already expended millions of dollars developing their projects; moreover, they have been harmed by current constraints on the grid.⁷ The vast financial commitment to Texas made by AES Wind and other similar generators should be recognized by the Commission. Accordingly, AES Wind urges the Commission to adopt the proposed amendment as it relates to financial commitment in the Southern CREZs.

AES Wind does not own or operate wind energy projects in the Panhandle region. Accordingly, AES Wind reserves comment regarding the Commission's tiered approach to financial commitment in the Panhandle CREZs.

B. Treat All Priority Projects and Default Projects Similarly

In the proposed rule, it is suggested that Panhandle CREZs will have different treatment regarding financial commitment/dispatch priority. For example, some financial commitment will be required before some transmission lines will be built. In fact, under the proposed amendments, in the event the Commission determines either Panhandle A or Panhandle B does not have the requisite showing of financial commitment, the Commission shall order that the CCNs for that CREZ not be filed.⁸

This leaves some confusion regarding three (3) CREZ transmission solutions. One *priority*⁹ CREZ transmission facility - Bowman to Oklaunion double-circuit 345 kV line¹⁰ - and two *default*¹¹ CREZ transmission facilities - West Krum to Carrollton NW

⁷ *Infra*, regarding current constraints on the grid.

⁸ Proposed P.U.C. SUBST. R. § 25.174(d)(4).

⁹ *Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones*, Docket No. 35665, Order on Rehearing, Finding of Fact No. 120 (May 15, 2009).

¹⁰ Compare *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672, Order on Rehearing (Oct. 7, 2008), Finding of Fact No. 136, listing priority facilities, to *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672, Order on Rehearing (Oct. 7, 2008), Finding of Fact No. 118, listed under "Panhandle."

¹¹ See *Issues related to Default Projects Severed from Docket No. 35665 (Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones)*, Docket No. 36146, Order (Nov. 6, 2008).

(adding a new 345-kilovolt ("kV") line to existing structures), and Parker to Everman (new 345-kV line on existing structures)¹² - are among those the Commission has determined relate to the *Panhandle* CREZs. As the citations reflect, these lines are classified under *Southern CREZs* in some filings but under *Panhandle CREZs* in other filings. For instance, the Bowman to Oklaunion line is listed as a priority project in Docket No. 33672's Order on Rehearing, Finding of Fact No. 136; however, this priority project is listed under "Panhandle" in Docket No. 33672's Order on Rehearing, Finding of Fact No. 118. Also, the West Krum to Carrollton NW project and the Parker to Everman project are both addressed in Docket No. 36146, relating to default projects, but they are listed as "Panhandle" in Docket No. 33672's Order on Rehearing, Finding of Fact No. 118. These three projects should be treated the same as all other priority and default projects, regardless as to which CREZ they are assigned.

Default projects and priority projects should receive the same treatment, regardless of their location. These lines have been deemed especially important by the Commission, and default and priority projects should not require additional showings of financial commitment. The use and usefulness of these lines has already been established, and additional collateral or financial commitment for these lines should not be required.

III. SCED Does Not Equate to Dispatch Priority

Unfortunately, the Proposal for Publication does not provide for a dispatch priority mechanism. Rather, it calls for the Electric Reliability Council of Texas' ("ERCOT") security-constrained economic dispatch ("SCED") tool to dispatch energy resources across the grid. Further, the Commission's current proposal states that if it

¹² Compare *Issues related to Default Projects Severed from Docket No. 35665 (Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones)*, Docket No. 36146, Order (Nov. 6, 2008); Ordering Paragraph No. 1, to *Commission Staff's Petition For Designation Of Competitive Renewable Energy Zones*, Docket No. 33672, Order on Rehearing (Oct. 7, 2008), Finding of Fact No. 118, listed under "*Panhandle*."

later determines that SCED is not relieving congestion, it may adopt a dispatch priority mechanism.¹³

The SCED tool may relieve current congestion, but it will do nothing to protect existing wind energy generators from "pilers-on." Without a dispatch priority mechanism, there is a high probability that we will be back in the same congested place a few years from now. Banks and project investors are going to be concerned about investing in ANY form of generation in ERCOT until they have some level of assurance that the wind energy generator will be able to run and project revenues can be realized. Accordingly, the Commission should revisit its current proposal and add an appropriate dispatch priority mechanism.

A. Dispatch Priority Mechanism Needed to Relieve Current Congestion

Testimony presented at the Hearing on the Merits in *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, P.U.C. Docket No. 33672, "credibly established that the amount of wind generation expected to be on the grid by the end of 2008 is approximately 10,000 MW [megawatts]."¹⁴ However, due to current constraints on the transmission grid, renewable energy constrained in the ERCOT West Zone is being replaced with more expensive thermal generation units in the North and South Zones; the replacement of wind energy in the West Zone with thermal energy from the North Zone and South Zone results in more expensive energy costs for

¹³ Proposed P.U.C. SUBST. R. § 25.174(e):

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 order, and if the commission determines that the security constrained 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~~limit~~ interconnection to and/or ~~establishing~~establish dispatch priorities regarding the transmission system in the CREZ, and ~~identifying~~identify the developers whose projects may interconnect to the transmission system in the CREZ under special protection schemes.

¹⁴ *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672, Order on Rehearing at 2 (Oct. 6, 2008).

consumers and additional air emissions for the State.¹⁵ Not only is clean, renewable energy never making it to the end-use consumer, but the wind energy generation companies and their off-takers are losing millions of dollars per month as a result of current constraints on the transmission grid.¹⁶

Considering the harm caused by these current constraints to the State, its end-use consumers, and the wind energy generators, it is vitally important that a dispatch priority mechanism be implemented to reliably and effectively deliver renewable energy to the State's population centers (also called "load centers").

B. Dispatch Priority Mechanism Needed to Incent Continued Development of Wind-Generating Assets

Secondly, a dispatch priority mechanism will send the correct market signals to incent the future development of wind-generating assets. Future development may not materialize to a level that fully utilizes the CREZ transmission facilities if the current grid constraints are not alleviated as soon as possible. Dispatch priority and new CREZ wind generating development go hand-in-hand: banks will not finance improvements to existing wind-generating assets or new wind-generating projects without some guarantee that their wind power will make it to market. This could be a truly perverse result given that the Commission's various CREZ-related dockets are aimed at incenting the development of renewable generation and improving the delivery of such generation.

C. SCED Approach Does Not Resolve "Piling On"

According to ERCOT, "[a]s the name implies, SCED determines the most economical dispatch of individual resources across the grid."¹⁷ In the future, when

¹⁵ ERCOT West, North, and South Zones are unrelated to the CREZs. ERCOT's Zones are transmission areas as defined by ERCOT's current Zonal Market.

¹⁶ An "off-taker" is a wholesaler that buys wind-generated energy and sells it to retail electric providers ("REPs") or is a REP that buys wind-generated energy and sells it to its own customers.

¹⁷ "Real-Time or Security Constrained Economic Dispatch (SCED)," ERCOT, available at <http://nodal.ercot.com/about/wc/rt.html> (accessed July 31, 2009).

ERCOT goes live with its Nodal Market design, "ERCOT will run [SCED] every five minutes using offers by individual resources and actual shift factors by each resource on each transmission element."¹⁸

Because SCED does not take into account a wind developer's participation in the CREZ process, the companies that have participated fully throughout the entirety of CREZ will still be handcuffed by the risk of grid constraints due to "piling on." Without disincentives to "pile-on," *i.e.*, without preventing the generators who did not make financial commitment earlier in the CREZ process from constructing wind energy resources after the CREZ transmission build-out is complete, the market will continue to experience transmission grid constraints. The very problem this rulemaking proceeding was designed to prevent - excess development - will go unsolved if SCED is used rather than an appropriate dispatch priority mechanism.

D. Dispatch Priority Should Reflect and Honor Docket No. 33672

Several dispatch priority mechanisms have been proposed, including: (1) a congestion revenue rights auction,¹⁹ (2) an automated offer curve,²⁰ (3) and physical limits on the dispatch of produced energy.²¹ AES Wind has studied the various proposals and has yet to settle firmly on a preferred dispatch priority mechanism. However, AES Wind can state affirmatively that SCED alone is not the answer. A dispatch priority mechanism that reflects and honors the efforts and financial commitments already made by existing CREZ wind energy developers must be selected by the Commission. AES Wind previously suggested that a dispatch priority mechanism should result in the following dispatch hierarchy:²²

¹⁸ *Id.*

¹⁹ *See generally* AEP Energy Partners' Comments (Sep. 29, 2008).

²⁰ *See generally* Iberdrola Renewables, Inc.'s Comments (Sept. 29, 2008).

²¹ *See generally* Shell WindEnergy, Inc.'s Comments (Sep. 29, 2008).

²² *See* 'What is meant by 'Collateral' – Eligibility for Posting Collateral,' PowerPoint Presented at April 17, 2009 Commission Workshop (April 17, 2009).

Priority	Level of Previous Commitment
1	Existing wind generators with supporting financial commitment testimony in P.U.C. Docket No. 33672.
2	Planned wind energy projects with supporting financial commitment testimony in P.U.C. Docket No. 33672.
3	Existing wind energy projects without supporting financial commitment testimony in P.U.C. Docket No. 33672.
4	Planned projects without supporting financial commitment testimony in P.U.C. Docket No. 33672.

AES Wind urges the Commission to recognize the wind energy generators that participated in P.U.C. Docket No. 33672, the seminal CREZ docket, and the great expenses made by wind energy generators in that docket and other CREZ-related dockets. SCED is a scheduling mechanism that does not provide for a dispatch priority based on financial commitments. The dispatch priority policy should be made now and an appropriate dispatch priority mechanism should be a part of amended P.U.C. SUBST. R. § 25.174.

Respectfully submitted,

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