Control Number: 34577

Item Number: 229

Addendum StartPage: 0

PUC DOCKET NO. 34577

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

COMMENTS OF PSEG TEXAS, LP

PSEG Texas, LP ("PSEG Texas") respectfully requests the Public Utility Commission of Texas ("Commission") to remove all references to dispatch priority in §25.174 in this docket, for all the reasons argued in the *COMMENTS OF THE JOINTLY RESPONDING COMPANIES* (May 8, 2009) and additionally requests that the Commission consider PSEG Texas' reply comments below.

Initial comments were filed on August 6, 2009 on the Commission's proposed revisions to §25.174, relating to Competitive Renewable Energy Zones ("CREZ"). The Commission's proposed amendments effect changes to Public Utility Regulatory Act ("PURA") §39.904(g), directing the Commission to consider the financial commitment levels by renewable generators for each CREZ in determining whether to grant a certificate of convenience and necessity.

PSEG Texas submits these reply comments in response to specific proposals contained in the initial comments. Although PSEG Texas does not oppose the Commission requiring demonstration of financial commitment for

CREZ participants, PSEG Texas offers no further comments at this time about the financial commitment proposals.

However, PSEG Texas opposes proposals made by several parties in the initial comments filed on the proposed changes to §25.174, because, if adopted by the Commission, these proposed changes will fundamentally, and adversely, impact Texas competitive generation investment and operation. Additionally, PSEG Texas maintains that the proposals are beyond the scope of §25.174 revisions. To avoid damaging the Texas competitive market, PSEG Texas respectfully requests that the Commission should remove all references to dispatch priority in §25.174.

I. The Anchor Tenant Model is Inconsistent With Texas Law

BNB Renewable Energy, L.L.C. ("BNB")[1] and Shell WindEnergy Inc. ("Shell")[2] proffer an "anchor-tenant" model employed in jurisdictions outside of Texas. While PSEG Texas is not necessarily opposed to this construct in other jurisdictions, PSEG Texas believes the anchor tenant model would violate current Texas law. Shell's proposal for entities interconnecting in ERCOT attempts to draw a parallel between the FERC jurisdictional anchor tenant model and what is possible in ERCOT under current law. The FERC jurisdictional model, which accommodates anchor tenants, is radically different than the Texas model. The

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[1] Comments filed in Project 34577 by BNB Renewable Energy, L.L.C. Regarding Amendment to 25.174 August 6, 2009.

[2] Comments filed in Project 34577 of Shell WindEnergy Inc. on the Proposal for Publication of amendments to PUC Subst. R. 25.174, August 6, 2009.

anchor tenant construct is a completely inappropriate proposal in ERCOT because all transmission costs are socialized in Texas, and, consequently, no physical transmission rights exist. The FERC, in a recent order addressing an anchor-tenant proposal, authorized the sale of physical transmission rights at negotiated rates.[3] Such physical transmission rights, which are what Shell seeks, are expressly prohibited by Texas PUC substantive rules, PUC Subst. R. 25.501(i) which states: "ERCOT shall provide congestion revenue rights, but shall not provide physical transmission rights." As a result, the anchor-tenant model does not work in ERCOT. Thus, any type of priority access to transmission provided through required interconnection of subsequent interconnectors with an SPS arrangement should be rejected.

PURA Section 35.004(b) states: "[T]he 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." An anchor tenant model as proposed by Shell, would provide discriminatory access to wholesale transmission facilities—all of which are paid for by load in Texas. Shell proposes that CREZ Participants who meet the collateral requirements would be allowed to "interconnect and use CREZ-related

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[3] *Chinook Power Transmission, LLC,* 126 FERC P. 61,134 (February 19, 2009)

facilities with no SPS,"[4] while entities interconnecting subsequently to CREZ facilities would be required to use an SPS. Clearly, the anchor tenant model directly contradicts the express language of 35.004(b) by guaranteeing some entities discriminatory, preferential, access to transmission facilities while concomitantly denying other entities full access to the same transmission facilities. Essentially this anchor tenant model is another way of "back-dooring" the implementation of dispatch priority, which to date has been rejected. Consequently, PSEG Texas opposes the attempt by BNB and Shell to do what the Commission has already determined not to do. The end result of an anchor tenant model if applied in Texas would be to radically restructure the current transmission funding and open access paradigms as they currently exist in Texas and should, consequently, be rejected on this basis.

II. The Shell and BNB Proposal is a Direct Attack Against Security Constrained Economic Dispatch

The fundamental premise of Texas competitive markets is that entities with generation submit offer curves for generation dispatch to the independent grid operator. In Texas, the Electric Reliability Council of Texas ("ERCOT") dispatches such offers to achieve the most economic generation pattern while abiding by the reliability and transmission security requirements. ERCOT's algorithm is called Security Constrained Economic Dispatch ("SCED").

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[4] Comments filed in Project 34577 of Shell WindEnergy Inc. on the Proposal for Publication of amendments to PUC Subst. R. 25.174, August 6, 2009, p4.

Shell suggests that SCED outcomes will resolve "[c]ongestion through broad curtailment measures that render uneconomic the significant investments in wind generation."[5] The function of SCED, as Shell admits, is to reveal the value of each generator to the grid at any point in time, which, by its very nature will always be economic.

Shell proposes that the Commission intervene to guarantee revenue sufficiency in circumstances where system conditions render a generator uneconomic. In other words, Shell seeks guaranteed protection for its generation investment. Shell states: "[t]he Commission's proposal fails to provide wind generators...the regulatory and economic certainty that are required"[6] Apparently, Shell believes that there is a Texas legal or policy requirement to subsidize independent generator development and guarantee financial success to all independent generators, including CREZ wind developers. What Shell envisions is a guaranteed return similar to the guaranteed returns under a cost of service regulatory structure. What Shell fails to note is that under a cost of service regulatory structure, although returns are guaranteed, the decision whether to actually build generation is a decision made within the regulatory framework. Consequently, there is no guarantee that Shell's plans would be necessary for reliability purposes under a cost of service regime.

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[5] Comments filed in Project 34577 of Shell WindEnergy Inc. on the Proposal for Publication of amendments to PUC Subst. R. 25.174, August 6, 2009, p2.
[6] Comments filed in Project 34577 of Shell WindEnergy Inc. on the Proposal for Publication of amendments to PUC Subst. R. 25.174, August 6, 2009, pp1-2.

Moreover, since the Texas Legislature unbundled entities in the electric industry, the Commission has never provided the kind of economic guarantees to any competitive generator, for the simple reason that doing so would privatize gain, while socializing risk to Texas consumers. If the Commission determines that a return to revenue sufficiency guarantees should be entertained, PSEG Texas encourages the Commission to address this in discussions of capacity markets and scarcity pricing, both topics which are beyond the scope of the instant proceeding but bear further discussion in separate proceedings.

Finally, PSEG Texas notes that implementing Shell's recommendations will require a process managed by the Commission to ensure that all generation investments, not just that of Shell, and not just those that were part of the CREZ proceeding, would be afforded the certainty that investment costs would be recovered. In effect, Shell's proposal would require a return to a regulated cost of service structure – topics which again are beyond the scope of this proceeding. Such a guarantee would once again return risk of operation and profitability to ratepayers, which is diametrically opposed to the whole premise of going to a competitive market. In a competitive market, all market participants are afforded non-discriminatory access to the grid and the ***opportunity*** to earn competitive returns, but are never guaranteed the ***right*** to such returns.

III. Special Protection Scheme ("SPS") Proposals

Shell attempts to demonstrate that it is unique among independent generation investors in ERCOT. Shell recommends that second non-CREZ

participants be required to install special protection schemes ("SPSs") – suggesting that such a model could "[p]rovide regulatory certainty...and send appropriate signals...to avoid replicating...piling-on."[7] Shell has failed to make the case as to why their particular investment is unique and different from that of all other independent generation developers in the region. All competitive generators bear investment risk when choosing to interconnect in Texas. Thus all developers are similarly situated in "second mover" risk. This issue is not new, and as pointed out by other parties, including PSEG Texas in this proceeding, entities have been bearing and managing this risk for years – without any type of priority dispatch.

Shell seeks certainty – where none can exist – through the requirement that non-CREZ participants install SPSs. Shell's argument is premised on their belief that the ERCOT system is a static one from the perspective of generation development and transmission topology changes. Shell seeks protection from: "[future developers that] chose to site generation heedless of the possibility that they would cause congestion on a transmission system designed and based on the commitments and project information provided by CREZ developers."[8] The dynamic nature of the ERCOT system is such that the information used to develop

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[7] Comments filed in Project 34577 of Shell WindEnergy Inc. on the Proposal for Publication of amendments to PUC Subst. R. 25.174, August 6, 2009, p2.
[8] Comments filed in Project 34577 of Shell WindEnergy Inc. on the Proposal for Publication of amendments to PUC Subst. R. 25.174, August 6, 2009, p2.

the CREZ analysis – by potential investors or ERCOT – was never intended or purported to be static.

Moreover, system changes that have already taken place indicate that the ERCOT system is always changing. A static situation upon which to base generation investment is not promised in any region, and is not available in ERCOT unless the entire basis for open interconnection was to change. Thus, the protections sought by Shell are unavailable to any investor in the ERCOT market – CREZ or otherwise.

Shell's SPS recommendation strikes at the very heart of the purpose of the Commission's move to a nodal system. Shell, through its proposal, is attempting to prejudice the SCED outcome – by use of SPS – so as to create winners and losers outside of the pure economics of SCED. The entire purpose of moving to centralized unit specific dispatch under nodal is to provide the most economic dispatch solution on a systemwide basis. Any deviations from the economic fundamentals of SCED would adversely affect the efficiency of the SCED solution, thereby degrading market outcomes and harming other developers and consumers.

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