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APPLICATION OF CROSS TEXAS §
TRANSMISSION, LLC TO AMEND A §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY FOR THE §
PROPOSED LIMESTONE TO GIBBONS §
CREEK 345-KV TRANSMISSION LINE §
IN BRAZOS, FREESTONE, GRIMES, §
LEON, LIMESTONE, MADISON AND §
ROBERTSON COUNTIES, TEXAS §

BEFORE THE STATE OFFICE OF
PUBLIC UTILITY REGULATION
FILING CLERK

OF

ADMINISTRATIVE HEARINGS

JOINT MOTION TO INTERVENE
OF
CALPINE CORPORATION AND NRG ENERGY INC.

TO THE HONORABLE TO THE HONORABLE KERRIE JO QUALTROUGH,
ADMINISTRATIVE LAW JUDGE:

Calpine Corporation and NRG Energy, Inc. (collectively "Intervenors") file their motion
to intervene pursuant to P.U.C. Proc. R. §§ 22.103 and 22.104.

I. Authorized Representatives.

The names of Intervenors' authorized representatives are:

For Calpine Corporation ("Calpine"):

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For NRG Energy, Inc. ("NRG"):

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For both Calpine and NRG:

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All pleadings and other documents should be served on these authorized representatives.

II. Standing to Intervene/Justiciable Interest.

Procedural Rule 22.103(b) states that a person has standing to intervene if that person “has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.” The phrase “adversely affected” is not otherwise defined in the rules, and must be given its common meaning.¹ The plain and ordinary meaning of “affect” is “to produce an effect ... upon.”²

Intervenors have a justiciable interest that may be adversely affected by the outcome of this proceeding, which seeks to amend its certificate of convenience and necessity (CCN) for a 345-kilovolt transmission line in Brazos, Freestone, Grimes, Leon, Limestone, Madison and Robertson Counties, Texas (the “Project”), which is part of the Houston Import Project (the “HIP”) recommended by ERCOT in its Independent Review. Together, Intervenors represent approximately 20,000 MW of generation in ERCOT. The proposed transmission line, built at ratepayer expense, will distort the ERCOT power market economics, both within the Houston area and outside it.

The Project, by design, will affect wholesale markets in which Intervenors operate. In fact, ERCOT expressly *assumes* that the Project will affect wholesale markets in which Intervenors operate.³ ERCOT’s Independent Review contends the Project will affect congestion

¹ *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625–26 (Tex. 2008) (noting that courts must “construe the text [of a rule or statute] according to its plain and common meaning unless a contrary intention is apparent from the context or unless such a construction leads to absurd results”).

² *In re S.A.M.*, 321 S.W.3d 785 (Tex. App.—Houston [14 Dist.] 2010, no pet.) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 35 (1993 ed.)).

³ See ERCOT Independent Review at 28.

costs,⁴ and ERCOT contends the Project will spur competition in the generation market outside the Coastal weather zone.⁵ One of the issues identified by the Commission in this proceeding is whether the proposed facility will “facilitate robust wholesale competition.”⁶ Intervenors are market participants who will be directly affected by the Project, and can speak to this important issue.

NRG is also an affected property owner, as Cross Texas’ portion of the proposed line will cross or otherwise directly affect property owned by NRG Texas Power LLC, a wholly owned subsidiary of NRG Energy, Inc., that owns and operates the Limestone Electric Generating Station and surrounding land. In addition, certain proposed routes of the line could potentially interfere with the operation of the Jewett Mine, a lignite mine partially owned by NRG Texas Power LLC and operated by the Texas Westmoreland Coal Company for the exclusive benefit of NRG’s Limestone Electric Generating Station in Jewett, Texas.

Additional factors support the Intervenors’ standing. NRG personnel participated in the ERCOT Regional Planning Group (“RPG”) process to review the HIP proposals, and both Calpine and NRG participated in the stakeholder review of the HIP, of which the Project is a part. Both Intervenors are substantial retail electric customers, often consuming power off the grid for station needs, and therefore possess an interest as consumers that must share in the Project’s costs. Both companies are “transmission service customers” under Commission rules, and the Project will affect conditions on the transmission system and hence the availability and quality of service provided. Two Project endpoints will connect in NRG’s Limestone Electric Generating Station’s power plant switchyard, and no doubt affect the facility’s ability to operate during construction and thereafter.

The impact the Project will have on Intervenors’ interests is sufficient to provide them standing here. In *Hays County v. Hays County Water Planning Partnership*,⁷ the Austin Court of Appeals held that the plaintiffs had standing to challenge a proposed plan to develop a future roadway. The court noted testimony showing that “even though the plan is prospective and not immediately effective, the published intention for future roadway development in the area does cause property-owner[s] ... potential and immediate economic loss with regard to their property

⁴ ERCOT Independent Review at 1.

⁵ ERCOT Independent Review at 28.

⁶ Order of Referral and Preliminary Order at 3.

⁷ 106 S.W.3d 349 (Tex. App.—Austin 2003, no pet.).

values,” and held that a “published intention for future roadway development” in an area covered by a transportation plan was enough to cause “potential and immediate economic loss” to the plaintiffs, providing them standing.⁸ Here, the Project, if allowed to proceed, will immediately affect forward-looking generation investment and retirement decisions that Intervenor must make in advance of and in anticipation of the Project’s implementation, as well as the wholesale electric market in which they participate daily.

In addition, Intervenor has invested significant resources in challenging ERCOT’s analysis in its Independent Review that recommended the HIP, including Docket No. 42511. While Intervenor’s complaint was denied in that proceeding, it shed light on some significant inconsistencies and flaws in ERCOT’s analysis and cast serious doubt upon many of the assumptions underlying ERCOT’s recommendation, prompting the Commission to request Staff to open a new project to examine the procedures and processes ERCOT uses to evaluate the need for costly transmission projects, and ensure that ERCOT’s methodologies for predicting load growth and resource adequacy are consistent and sound. Intervenor may be the only parties with sufficient historical knowledge and resources available to adequately question the need for the Project, as many landowner intervenors will likely focus on routing issues particular to them.

As the PUC Executive Director recently noted in a letter to concerned citizens in a related proceeding, Docket No. 44547, ensuring that issues “regarding the potential impact of changing economic conditions on load growth and the need for more import capacity to the Houston area” be “fully vetted” is “precisely why it is important that all interested parties intervene in and participate” in the CCN proceedings.⁹ Intervenor’s participation in this proceeding will help to ensure that enough evidence is presented to achieve this necessary and important full vetting.

To the extent necessary, Intervenor requests the right to adduce further evidence supporting their justiciable interest.

⁸ *Id.* at 357; *See also, Texas Water Development Bd. v. Ward Timber, Ltd.*, 411 S.W.3d 554 (Tex. App.—Eastland 2013, no pet.) (Water Board’s approval of the state water plan impaired plaintiffs’ ability to invest in property improvements, providing them standing).

⁹ Docket No. 44547, Item 3, Letter To Judge Duhon Regarding Transmission Project at 3.

III. CONCLUSION

For the reasons asserted herein, the Intervenor request that the Commission grant their motion to intervene and admit Calpine and NRG as intervenors in this proceeding for all purposes, and for such other relief to which they may be entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this motion has been served on all parties of record and parties who have filed motions to intervene by fax, U.S. first class mail, hand-delivery, electronic mail, and/or by hand delivery on the 14th day of May, 2015.


Chris Reeder