



## Filing Receipt

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**SOAH DOCKET NO. 473-22-1074  
PUC DOCKET NO. 52487**

<b>APPLICATION OF ENTERGY TEXAS, INC.</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TO AMEND ITS CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY TO</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONSTRUCT THE ORANGE COUNTY</b>	<b>§</b>	
<b>ADVANCED POWER STATION</b>	<b>§</b>	

**OFFICE OF PUBLIC UTILITY COUNSEL'S  
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

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**October 13, 2022**

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**OFFICE OF PUBLIC UTILITY COUNSEL’S  
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits these exceptions to the proposal for decision (“PFD”) issued by the State Office of Administrative Hearings (“SOAH”) in this proceeding on September 26, 2022.

The PFD correctly rejects the hydrogen component of Entergy Texas, Inc.’s (“ETI”) application identified by OPUC, other intervenors, and Staff of the Public Utility Commission of Texas (“Commission Staff”).<sup>1</sup> Additionally, the SOAH Administrative Law Judges (“ALJs”) recognize that the carbon tax assumption causes the proposed facility to appear more economic than it otherwise would, but still propose ETI’s referenced gas case is reasonable.<sup>2</sup> OPUC does not oppose the ALJ’s conclusion that all transmission and interconnection costs will be addressed in a separate certification proceeding.<sup>3</sup>

OPUC is not filing exceptions on every issue in which its position was not adopted in the PFD. OPUC’s exceptions are limited to the recommendations made by the ALJs relating to (1) the need for additional capacity, and (2) the resource selection process. For the reasons discussed below, OPUC requests that the Commission issue an order in this proceeding consistent with OPUC’s exceptions.

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<sup>1</sup> Proposal for Decision at 149, 161, 162 (Sept. 26, 2022) (“PFD”).

<sup>2</sup> *Id.* at 126, 127.

<sup>3</sup> *Id.* at 149.

### **III. The Adequacy of Existing Service and the Need for Additional Service (P.O. Issue No. 15)**

#### **a. Need for Additional Capacity (P.O. Issue Nos. 15-18)**

OPUC appreciates the considerations of the ALJs and does not dispute their finding that extending the life of Sabine 4 to 2034 is riskier than the other Portfolios proposed.<sup>4</sup> While OPUC is not ignoring the potential risks associated with delaying retirement of Sabine 4, no serious analysis of alternatives to Orange County Advanced Power Station (“OCAPS”) has been presented by Entergy Texas, Inc. (“ETI”). Therefore, OPUC disagrees that Sabine 4 should be deactivated in 2026 as ETI proposes.<sup>5</sup> As discussed in its Initial Post Hearing Brief, it is OPUC’s position that, in combination with ETI’s planned solar additions, the retirement of Sabine 4 can be safely postponed by a few years to accommodate ETI’s returning to the Request for Proposal (“RFP”) phase, which would enable ETI to make a proper determination as to whether OCAPS or another project with a more reasonable cost to ratepayers is best suited for ETI’s needs.<sup>6</sup>

While OPUC relies on Portfolio 5 as the basis for its recommendation to delay the retirement of Sabine 4, OPUC is not recommending that Sabine 4 be kept in service until 2034. Rather, OPUC’s recommendation is that ETI return to the RFP phase of the Certificate of Convenience and Necessity (“CCN”) amendment process in order to determine if OCAPS is truly the best option for ETI’s capacity needs and the best value for ratepayers.<sup>7</sup> The original, flawed RFP process took place in 2020, and OCAPS is scheduled, if approved, to begin operations in 2026.<sup>8</sup> This represents a six-year planning period. Applying the same predicted schedule used by ETI, if OCAPS was returned to the RFP phase in 2023 for a proper bidding process, went forward, and was subsequently approved in a future CCN proceeding, the new plant could reasonably be expected to be placed in service by 2030. As a result, the retirement of Sabine 4 would only need to be delayed by 4 years, not the full 8 years contemplated in Portfolio 5. Therefore, the costs and

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<sup>4</sup> *Id.* at 160.

<sup>5</sup> *Id.* at 159.

<sup>6</sup> Office of Public Utility Counsel’s Post-Hearing Initial Brief at 6 – 7. (Jul. 18, 2022). (“OPUC Initial Brief”).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> ETI Ex. 8, Direct Testimony of Carlos Ruiz at 21 (Sep. 16, 2021). (“Ruiz Direct”).

risks associated with the retirement of Sabine 4 should be discounted under OPUC's recommended 4-year delay versus the 8-year delay contemplated in Portfolio 5.

**b. Consideration of Alternatives to OCAPS (P.O. Issue No. 20)**

**i. 2019 Portfolio Analysis and Updates**

**ii. RFP Process**

While the ALJs state that ETI appropriately designed the 2020 RFP to best address the resource needs of its customers,<sup>9</sup> OPUC counters that no matter the construction of the RFP, the fact is that it took place during one of the most unusual times in recent memory, the COVID-19 lockdowns, when many employers were either attempting to transition to a new, work-from-home environment or slowing down operations entirely.<sup>10</sup> Notably, a potential bidder even requested a delay in the RFP response time, which ETI declined to accommodate, opting to proceed under their pre-determined schedule.<sup>11</sup> While ETI claims that the RFP was structured similar to its past RFPs, OPUC is unaware of any prior RFP in which the resource selected was not actually analyzed as part of the RFP process.<sup>12</sup> In fact, neither ETI's 2019 Portfolio Analysis, nor its 2020 RFP considered or requested a dual fuel-fired OCAPS-style plant.<sup>13</sup> Because OCAPS was not even considered in the RFP process, OPUC contends the RFP process was predetermined and slanted to lead to the self-build option.

Ultimately, the RFP process was insufficient to prove that OCAPS is necessary for the service, accommodation, convenience, or safety of the public under PURA § 37.056(a). OPUC therefore respectfully requests that the Commission reconsider this position and require ETI to return to the RFP phase to solicit actual competitive proposals for the benefit of ETI's customers.

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<sup>9</sup> PFD at 161.

<sup>10</sup> OPUC Ex. 1, Direct Testimony of Karl J. Nalepa at 14:6 – 8 (March 18, 2022). (“Nalepa Direct”).

<sup>11</sup> *Id.* at 14:8 – 9.

<sup>12</sup> *Id.* at 14:12 – 13.

<sup>13</sup> *Id.*

## **CONCLUSION**

For the reasons stated herein, OPUC respectfully requests that the Commission modify the PFD to include findings of fact and conclusions of law consistent with these exceptions and that OPUC be granted any other relief to which it may be entitled.

Date: October 13, 2022

Respectfully submitted,

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ATTORNEYS FOR THE  
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 13<sup>th</sup> day of October 2022 by facsimile, electronic mail, and/or first class, U.S. Mail.



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Renee Wiersema