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PROJECT NO. 53403

REVIEW OF CHAPTER 25.101

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PROPOSAL FOR PUBLICATION OF AMENDMENTS TO 16 TAC §25.101 AS
APPROVED AT THE AUGUST 25, 2022 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.101, relating to *Certification Criteria*. This proposed rule will implement amendments to the Public Utility Regulatory Act (PURA) enacted by the 87th Texas Legislature, Regular Session. Specifically, these amendments will implement changes made to PURA §37.052, §37.056 and §39.159 as revised by Senate Bill (SB) 1281 by: establishing a congestion cost savings test for evaluating economic transmission projects; requiring the commission to consider historical load, forecasted load growth, and additional load seeking interconnection when evaluating the need for additional Electric Reliability Council of Texas (ERCOT) reliability transmission projects; providing exemptions to the certificate of convenience and necessity (CCN) requirements for certain transmission projects; and requiring ERCOT to conduct a biennial assessment of the ERCOT power grid's reliability and resiliency in extreme weather scenarios.

The proposed rule amendments will also implement amendments to PURA §37.058 as revised by House Bill (HB) 1510. Specifically, these amendments clarify that an electric utility operating outside of ERCOT may, but is not required to, obtain a CCN to own or operate a generation facility with a capacity of 10 megawatts or less.

The proposed rule amendments will also allow for the commission to consider the resiliency benefits of a proposed transmission project, as determined by the new biennial assessment conducted by ERCOT, when determining whether to approve the project.

Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rule amendments as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

- (1) the proposed amendments will not create a government program and will not eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation of new employee positions and will not require the elimination of existing employee positions;
- (3) implementation of the proposed amendments will not require an increase and will not require a decrease in future legislative appropriations to the agency;
- (4) the proposed amendments will not require an increase and will not require a decrease in fees paid to the agency;
- (5) the proposed amendments will create a new regulation by placing additional requirements on ERCOT and transmission providers seeking approval for new transmission projects;
- (6) the proposed amendments will expand, limit, or repeal an existing regulation for the reasons stated above;

(7) the proposed rules will not change the number of individuals subject to the rules' applicability, and

(8) the proposed rules may affect this state's economy due to the potential economic benefits of additional transmission lines.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed amendments. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

Fiscal Impact on State and Local Government

John Poole, Engineering Specialist, in the Infrastructure Division has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

John Poole has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the adoption of the proposed amendments will be the potential reduction in transmission congestion, an increase in ERCOT grid reliability

and resiliency, long term consumer benefits, and an increase in efficiencies in the CCN certification process. There will be no probable economic cost to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

For each year of the first five years the proposed sections are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by **September 22, 2022**. If a request for public hearing is received, commission staff will file in this project details on the time and location of the hearing and instructions on how a member of the public can participate in the hearing.

Public Comments

Comments may be filed through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by **September 22, 2022**. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission

invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 53403. Each set of comments should include a standalone **executive summary** as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should list each substantive recommendation made in the comments. Citations to detailed discussion in the comments are permissible but not required.

Statutory Authority

The amendments are proposed under PURA §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §37.052 that clarifies projects or activities that do not require an electric utility to amend a transmission CCN; PURA §37.056, which establishes a congestion savings test for evaluating economic transmission projects and also requires the commission to consider historical load, forecasted load growth, and additional load seeking interconnection while evaluating reliability transmission projects in ERCOT region; PURA §37.058 that exempts an electric utility that operates solely outside of ERCOT, from requiring a certificate for a generating facility with a capacity of 10MW or less; and also PURA §39.159 that requires ERCOT to conduct a biennial assessment of the ERCOT power grid's reliability in extreme weather scenarios to recommend transmission projects.

Cross reference to statutes: PURA §§14.002, 37.052, 37.056, 37.058, and 37.159.

§25.101. Certification Criteria.

- (a) **Definitions.** The following words and terms, when used in this section, ~~shall~~ have the following meanings unless the context ~~clearly~~ indicates otherwise:
- (1) **Construction ~~or~~ extension** – ~~Does~~Shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. Acquisition of right-of-way must ~~shall~~ not be deemed to entitle an electric utility to the grant of a certificate of convenience and necessity without showing that the construction ~~or~~ extension is necessary for the service, accommodation, convenience, or safety of the public.
- (2) **Generating unit** -- Any electric generating facility. This section does not apply to any generating unit that is ten megawatts or less and is built for experimental purposes only.
- (3)-(7) (No change.)
- (b) **Certificates of convenience and necessity for new service areas and facilities.** Except for certificates granted under subsection (e) of this section, the commission will ~~may~~ grant an application and issue a certificate only if it finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public, and complies with the statutory requirements in the Public Utility Regulatory Act (PURA) §37.056. The commission may issue a certificate as applied for, or refuse to issue it, or issue it for the construction of a portion of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission will render a decision

approving or denying an application for a certificate within one year of the date of filing of a complete application for such a certificate, unless good cause is shown for exceeding that period. A certificate, or certificate amendment, is required for the following:

(1) **Change in service area.** Any certificate granted under this section must ~~shall~~ not be construed to vest exclusive service or property rights in and to the area certificated.

(A) Uncontested applications: An application for a certificate under this paragraph must ~~shall~~ be approved administratively within 80 days from the date of filing a complete application if:

(i)-(iii) (No change.).

(B) Minor boundary changes or service area exceptions: Applications for minor boundary changes or service area exceptions must ~~shall~~ be approved administratively within 45 days of the filing of the application provided that:

(i)-(iii) (No change.).

(2) **Generation facility.**

(A) In a proceeding involving the purchase of an existing electric generating facility by an electric utility that operates solely outside of ERCOT, the commission will ~~shall~~ issue a final order on a certificate for the facility not later than the 181st day after the date a request for the certificate is filed with the commission under PURA §37.058(b).

(B) In a proceeding involving a newly constructed generating facility by an electric utility that operates solely outside of ERCOT, the commission will

~~shall~~ issue a final order on a certificate for the facility not later than the 366th day after the date a request for the certificate is filed with the commission under PURA §37.058(b).

(C) An electric utility operating solely outside of the ERCOT region may, but is not required to, obtain a certificate to install, own, or operate a generation facility with a capacity of 10 megawatts or less.

- (3) **Electric transmission line.** All new electric transmission lines ~~must~~ ~~shall~~ be reported to the commission in accordance with §25.83 of this title (relating to Transmission Construction Reports). This reporting requirement is also applicable to new electric transmission lines to be constructed by an MPE seeking to directly or indirectly construct, install, or extend a transmission facility outside of its applicable boundaries. For an MOU, the applicable boundaries are the municipal boundaries of the municipality that owns the MOU. For an MPA, the applicable boundaries are the municipal boundaries of the public entities participating in the MPA.

(A) **Determination of need**~~Need~~:

- (i) ~~Except as stated below, the following must be met for a transmission line in the ERCOT power region.~~ The applicant must present an economic cost-benefit study. In addition to the following requirements, other direct and indirect costs and benefits to the transmission system attributable to the project may be included in the cost-benefit study. The study must include: ~~that includes an analysis that shows that the levelized ERCOTwide annual production cost~~

~~savings attributable to the proposed project are equal to or greater than the first-year annual revenue requirement of the proposed project of which the transmission line is a part. Indirect costs and benefits to the transmission system may be included in the cost-benefit study. The commission shall give great weight to such a study if it is conducted by the ERCOT independent system operator.~~

(I) an analysis of whether the estimated levelized annual congestion cost savings for consumers, calculated on a system-wide basis, are equal to or greater than the first-year revenue requirement of the proposed project of which the transmission line is a part, and

(-a-) ERCOT, in consultation with commission staff, must develop a congestion cost savings test to implement subclause (I) of this clause, and

(-b-) prior to the effective date of the test developed by ERCOT under item (-a-) of this subclause, ERCOT may utilize the generator revenue reduction test, effective Dec. 1, 2011 under the ERCOT Nodal Protocols §3.11.2(6) to calculate the estimated congestion cost savings for consumers as required by subclause (I) of this clause; ERCOT may continue to rely upon calculations developed from the generator revenue reduction test to evaluate ongoing

applications after the effective date of the test under item (-a-) of this subclause, and

(II) an analysis of whether the levelized ERCOT- wide annual production cost savings attributable to the proposed project are equal to or greater than the first-year annual revenue requirement of the proposed project of which the transmission line is a part.

(ii) Except as stated below, a transmission line in the ERCOT region must demonstrate savings under clause (i)(I) or (i)(II) of this subparagraph.

(iii) The requirements of clauses (i) and (ii) of this subparagraph do~~This requirement also does~~ not apply to an application for a transmission line that is necessary to meet state or federal reliability standards, including: a transmission line needed to interconnect a transmission service customer or end-use customer; or needed due to the requirements of any federal, state, county, or municipal government body or agency for purposes including, but not limited to, highway transportation, airport construction, public safety, or air or water quality.

~~(iv)(ii)~~ For a transmission line not addressed by clause (i) and (ii) of this subparagraph, the commission will ~~shall~~ consider, among other factors, the needs of the interconnected transmission systems to support a reliable and adequate network and to facilitate robust

wholesale competition. When evaluating reliability for a proposed project in the ERCOT region, the commission will consider the historical load, forecasted load growth, and additional load currently seeking interconnection as determined by ERCOT. The commission will ~~shall~~ give great weight to:

- (I) the recommendation of an organization that meets the requirement of PURA §39.151; and/or
- (II) written documentation provided by a transmission service provider to ERCOT that the transmission line is needed to interconnect transmission service or retail customers; ~~a transmission service customer or an end user.~~

(v) The commission may approve a transmission line that does not otherwise demonstrate sufficient economic savings under clauses (i) and (ii) of this subparagraph or reliability benefits under clauses (iii) or (iv) of this subparagraph if the line would address a resiliency issue identified by ERCOT in the grid reliability and resiliency assessment required by subparagraph (E) of this paragraph. In determining whether to approve a such a line the commission will consider:

- (I) the extent to which the transmission line failed to demonstrate sufficient economic or reliability benefits to merit approval on those grounds;
- (II) the extent to which the transmission line would address the

resiliency issue identified by ERCOT by reducing the impacts of potential load shed caused by regional extreme weather scenarios on customers.

(III) the cost effectiveness of the transmission line's ability to address the resiliency issue identified by ERCOT compared to other possible solutions, transmission or otherwise; and,

(IV) other factors listed in PURA §37.056(c), as appropriate.

(B) **Routing:** An application for a new transmission line must ~~shall~~ address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, the line must ~~shall~~ be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors must be considered in the selection of the utility's alternative routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):

(i)-(iv) (No change.)

(C) **Uncontested transmission lines:** An application for a certificate for a transmission line will ~~shall~~ be approved administratively within 80 days from the date of filing a complete application if:

(i)-(ii) (No change.)

(D) **Projects deemed critical to reliability.** Applications for transmission lines which have been formally designated by a PURA §39.151 organization as critical to the reliability of the system will ~~shall~~ be considered by the commission on an expedited basis. The commission will ~~shall~~ render a decision approving or denying an application for a certificate under this subparagraph within 180 days of the date of filing a complete application for such a certificate unless good cause is shown for extending that period.

(E) **Grid reliability and resiliency assessment.** ERCOT must conduct a biennial assessment of the ERCOT power grid's reliability and resiliency in extreme weather scenarios. Each assessment must:

- (i) consider the impact of different levels of thermal and renewable generation availability;
- (ii) identify areas of the state that face significant grid reliability and resiliency issues, taking into account the impact of potential load shed caused by regional extreme weather scenarios on customers, including multiple element outage analysis when appropriate, and
- (iii) recommend transmission projects that may increase the grid's reliability or resiliency in extreme weather scenarios.

(4) **Tie line.** An application for a tie line must include a study of the tie line by ~~the~~ ERCOT ~~independent system operator~~. The study must ~~shall~~ include, at a minimum, an ERCOT-approved reliability assessment of the proposed tie line. If an independent system operator intends to conduct a study to evaluate a proposed tie line or intends to provide confidential information to another entity to permit the

study of a proposed tie line, the independent system operator ~~must~~ shall file notice with the commission at least 45 days prior to the commencement of such a study or the provision of such information. ~~This paragraph does not apply to a facility that is in service on December 31, 2014.~~

(c) **Projects or activities not requiring a certificate.** A certificate, or certificate amendment, is not required for the following:

- (1) An ~~A contiguous~~ extension of ~~these~~ facilities as described in PURA §37.052(a) and (b);
- (2) A new electric high voltage switching station, or substation;
- (3) The repair or reconstruction of a transmission facility due to emergencies. The repair or reconstruction of a transmission facility due to emergencies should ~~shall~~ proceed without delay or prior approval of the commission and must ~~shall~~ be reported to the commission in accordance with §25.83 of this title;
- (4) The construction or upgrading of distribution facilities within the electric utility's service area;
- (5) Routine activities associated with transmission facilities that are conducted by transmission service providers. Nothing contained in the following subparagraphs should be construed as a limitation of the commission's authority as set forth in PURA. Any activity described in the following subparagraphs must ~~shall~~ be reported to the commission in accordance with §25.83 of this title. The commission may require additional facts or call a public hearing thereon to determine whether a certificate of convenience and necessity is required. Routine activities are defined as follows:

(A) The modification, construction, or extension of ~~a an existing~~ transmission line that connects existing transmission facilities solely to provide service to a substation or metering point provided that:

(i) the transmission line modification, construction, or extension does not exceed: an extension to a substation or metering point does not exceed one mile; and

(I) three miles if the line connects to a load-serving substation or metering point; or

(II) two miles if the line connects to a generation substation or metering point; and

(ii) all rights-of-way necessary for the modification, construction, or extension have been purchased, and all landowners whose property is crossed by the transmission facilities have given prior written consent.

(iii) all landowners whose property is directly affected by the transmission line, as defined in §22.52(a)(3) of this title, have given written consent for the modification, construction, or extension. If the transmission line modification, construction, or extension does not exceed one mile to provide service to a substation or metering point, written consent is only required by landowners whose property is crossed by the transmission line.

(B)-(F) (No change.).

(6)-(8) (No change.).

- (d) **Standards of construction and operation.** In determining standard practice, the commission ~~will shall~~ be guided by the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code, and such other codes and standards that are generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. Each electric utility must ~~shall~~ construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other public utilities insofar as practical.
- (1) The standards of construction ~~shall~~ apply to, but are not limited to, the construction of any new electric transmission facilities, rebuilding, upgrading, or relocation of existing electric transmission facilities.
- (2) For electric transmission line construction requiring the acquisition of new rights-of-way, an electric utility ~~utilities~~ must include in the easement agreement, at a minimum, a provision prohibiting the new construction of any above-ground structures within the right-of-way. For this purpose, new ~~New~~ construction of above-ground structures does ~~shall~~ not include necessary repairs to existing structures, farm or livestock facilities, storage barns, hunting structures, small personal storage sheds, or similar structures. A utility ~~Utilities~~ may negotiate appropriate exceptions in instances where the electric utility is subject to a restrictive agreement being granted by a governmental agency or within the constraints of an industrial site. Any exception to this paragraph must meet all applicable requirements of the National Electrical Safety Code.

- (3) Measures must ~~shall~~ be applied when appropriate to mitigate the adverse impacts of the construction of any new electric transmission facilities, and the rebuilding, upgrading, or relocation of existing electric transmission facilities. Mitigation measures must ~~shall~~ be adapted to the specifics of each project and may include such requirements as:

(A)-(D) (No change.)

- (e) **Certificates of convenience and necessity for existing service areas and facilities.** For purposes of granting these certificates for those facilities and areas in which an electric utility was providing service on September 1, 1975, or was actively engaged in the construction, installation, extension, improvement of, or addition to any facility actually used or to be used in providing electric utility service on September 1, 1975, unless found by the commission to be otherwise, the following provisions ~~shall~~ prevail for certification purposes:

- (1) The electrical generation facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, must ~~shall~~ be limited, unless otherwise provided, to the facilities and real property on which the facilities were actually located, used, or dedicated as of September 1, 1975.
- (2) The transmission facilities and service area boundary of an electric utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's

system as of September 1, 1975, must ~~shall~~ be, unless otherwise provided, the facilities and a corridor extending 100 feet on either side of said transmission facilities in place, used or dedicated as of September 1, 1975.

- (3) The facilities and service area boundary for the following types of electric utilities providing distribution or collection service to any area, or actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the electric utility's system as of September 1, 1975, must ~~shall~~ be limited, unless otherwise found by the commission, to the facilities and the area which lie within 200 feet of any point along a distribution line, which is specifically deemed to include service drop lines, for electrical utilities.

- (f) **Transferability of certificates.** Any certificate granted under this section is not transferable without approval of the commission and remains ~~shall continue~~ in force until further order of the commission.

- (g) **Certification forms.** All applications for certificates of convenience and necessity must ~~shall~~ be filed on commission-prescribed forms so that the granting of certificates, both contested and uncontested, may be expedited. Forms may be obtained from Central Records.

- (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 26th DAY OF AUGUST 2022 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**