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Received - 2022-11-17 11:38:06 AM
Control Number - 53758
ItemNumber - 61

DOCKET NO. 53758

APPLICATION OF GRID UNITED	§	PUBLIC UTILITY COMMISSION
TEXAS LLC FOR PARTIAL	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY RIGHTS	§	
PURSUANT TO PURA §§ 37.051(c-1)	§	
AND 37.056(b)(2) TO INTERCONNECT	§	
AN HVDC FACILITY TO THE ERCOT	§	
TRANSMISSION GRID	§	

NRG TEXAS POWER LLC’S BRIEF ON THRESHOLD ISSUES

NRG Texas Power LLC (NRG) files this Brief on Threshold Issues. Pursuant to the Order Requesting Briefing on Threshold Issues, this brief is timely filed.¹

I. PROCEDURAL HISTORY

On July 5, 2022, Grid United Texas LLC (Grid United) filed its application for partial certificate of convenience and necessity (CCN) rights to interconnect the facilities of El Paso Electric Company (EPE) in the Western Electricity Coordinating Council (WECC) region with those of Lower Colorado River Authority (LCRA) Transmission Service Corporation (TSC) in the Electric Reliability Council of Texas (ERCOT) region.

On October 25, 2022, the Public Utility Commission (Commission) administrative law judge (ALJ) issued the Order Requesting Briefing on Threshold Issues.

II. DISCUSSION

1. Does PURA § 37.056(e) prohibit the Commission from granting Grid United Texas a certificate of convenience and necessity or any rights emanating from a certificate of convenience and necessity for the proposed interconnection?

As filed, Grid United has not provided enough details in its application to determine whether it has met the requirements of Public Utility Regulatory Act² § 37.056(e). In its application, Grid United states that it is requesting that the Commission grant partial CCN rights

¹ Order Requesting Briefing on Threshold Issues at 4 (Oct. 15, 2022) (establishing 12:00 p.m. on November 17, 2022 as the deadline for all parties to file their initial briefs).

² Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (PURA).

for the proposed interconnection and a finding that the proposed interconnection is the public interest.³

PURA § 37.056(e) states that “[a] certificate to build, own, or operate a new transmission facility that directly interconnects with an existing electric utility facility or municipally owned utility facility may only be granted to the owner of that existing facility.” PURA § 37.056(e) continues and states “[i]f a new transmission facility will directly interconnect with facilities owned by different electric utilities or municipally owned utilities, each entity shall be certificated to build, own, or operate the new facility in separate and distinct equal parts unless they agree otherwise.”

The proposed project is an interconnection between ERCOT and WECC with a high voltage direct current (HDVC) converter station and the LCRA TSC Bakersfield Switching Station in Pecos, County and an EPE Station in El Paso County, Texas (Proposed Project). For EPE, both the Caliente Station and Newman Station (existing facilities) have been evaluated. Grid United specifies that it will design, procure, construct, operate, and maintain the HDVC converter stations necessary to connect ERCOT and WECC. LCRA TSC will construct, own, and operate the facilities necessary for interconnection at the Bakersfield Switching Station and EPE will construct, own and operate the facilities necessary to allow for interconnection at the Caliente or Newman Substations.⁴

As proposed, Grid United would build, own, and operate the HDVC converter stations that directly interconnect with facilities owned by LCRA TSC and EPE. It is unclear what utility, if any would own and operate the line connecting the HVDC converter stations. Regardless, based on current statutory language, as the existing owners of the transmission substations, LCRA TSC and EPE would have to agree to allow Grid United to be the owner of the interconnecting HVDC converter stations.⁵ While Grid United has included supportive

³ Application at Bates 000004.

⁴ Application at Bates 000013.

⁵ PURA § 39.056(g) (providing that, “[n]otwithstanding any provisions of this section, an electric utility or municipally owned utility that is authorized to build, own, operate a new transmission facility under Subsection (e) or (f) may designate another electric utility that is currently certificated by the commission within the same electric power region, coordinating council, independent system operator, or power pool or a municipally owned

letters as attachments to its application from LCRA TSC and EPE,⁶ it is unclear what Grid United, LCRA TSC, and EPE have agreed to regarding certification. Without this information, it is unclear whether PURA § 37.056(e) prohibits the Commission from granting Grid United's request for partial CCN rights.

2. Does subchapter B of chapter 37 of PURA, including PURA § 37.056(b)(2), authorize the Commission to grant partial certificate-of-convenience-and-necessity rights for a design concept for interconnection between ERCOT and another power region rather than specific interconnection facilities?

Subchapter B of chapter 37 of PURA authorizes the Commission to grant partial CCN rights for a portion of the facilities or systems, but it does require the approved facilities be specified in order to apply the factors in § 37.056. While § 37.056(b)(2) does reference a partial CCN for a right or privilege, this proposed CCN is for a specific facility. The right or privilege language in this section of the statute more reasonably applies to the CCN right to provide retail electric utility service and is not applicable here. In this instance, the Commission needs to understand what aspects of the project are proposed to be considered within the ultimate CCN.

Therefore, in granting partial CCN rights the Commission **must** consider the following: adequacy of existing service, need for additional service, and the effect of granting the certificate on the recipient of the certificate and any electric utility servicing the proximate area and any other factors it believes is necessary to determining whether granting the CCN for the proposed interconnection is the public interest. The Commission has the authority to decide whether that includes information on specific interconnection facilities. However, in determining whether the proposed interconnection is in the public interest the Commission must consider whether the Proposed Project is a merchant-funded transmission project with a voluntary subscription model for which the costs are borne by business interests or a transmission project used for another purpose for which the costs are included in utility rate base and recovered from end use customers. NRG notes that “the Commission has broad

utility to build, own, or operate a portion or all of such new transmission facility, subject to any requirements adopted by the commission by rule.”).

⁶ Application at Attachments 4 and 5.

authority to prescribe reasonable conditions to protect the public interest that is not limited by express sections of PURA.”⁷

Grid United’s application attempts to leave open the question of whether or not the transmission line connecting the HVDC substation facilities would be considered utility facilities, the cost of which is born by end-users. In fact, in its application Grid United only provides limited information regarding financing and who will bear the costs of the project stating that it **anticipates** it will propose one or some combination of the following financing structures including:

- Market-based rate charges from wholesale market participants shipping power across the HVDC facilities between ERCOT and WECC;
- Payments in exchange for reliability, inertia response, ancillary services, and other benefits of the proposed project; and
- Cost-allocation for portions of the tie line cost based on reliability and resiliency benefits to both El Paso and ERCOT customers.⁸

Grid United has not committed to whether the public will bear the costs of the Proposed Project. Determining who bears the costs for the Proposed Project is an important factor to consider under PURA § 37.056(c) as it relates to the facts Grid United must present to meet its burden regarding need for the transmission line. Overall, the Commission must consider who will bear the costs as part of the factors under PURA § 37.056(c) before determining whether the proposed interconnection is in the public interest and granting partial CCN rights under PURA § 37.056(b)(2). Significantly, in *Southern Cross Transmission*, the Commission felt it necessary to impose conditions regarding cost-allocation under the public interest.⁹ Similar conditions should be considered here before a public interest finding is evaluated. A partial approval of the facilities at each substation without an express determination that that approval

⁷ *Application of the City of Garland to Amend a Certificate of Convenience and Necessity for the Rusk to Panola Double-Circuit 345kV Transmission Line in Rusk County*, Docket No. 45624, Order on Rehearing at 54 (May 23, 20217).

⁸ Application at Bates 000021 (emphasis added).

⁹ Docket No. 45624, Order on Rehearing at 7–10 (providing, for example, that ERCOT ratepayers should not bear certain costs associated with the project and that ERCOT could require the back down or temporary termination of exports if necessary to avoid or mitigate a potential reliability issue).

is conditioned upon the connecting transmission line cost being excluded from public utility cost would not be reasonable.

3. Does the Commission have authority under subchapter B of chapter 37 of PURA to make a preliminary finding that a certificate is necessary for the service, convenience, or safety of the public under PURA § 37.056(a) or a preliminary finding that the public convenience and necessity requires, or will require, the proposed interconnection under PURA § 37.051(c-1)? If so, what effect will such preliminary determinations have, including whether the Commission will have any authority to revisit those determinations in a future certification proceeding?

There is concern about possible preemption and the Commission's ability to make the need findings under PURA § 37.056(c) after the issuance of a Federal Energy Regulatory Commission (FERC) order regarding the proposed interconnection. While PURA § 36.051(c-1) states that a person may not interconnect a facility to an ERCOT transmission grid that enables additional power to be imported or exported out of the ERCOT power grid unless the person obtains a certificate from the Commission, the person only needs to apply for the certificate 180 days before seeking an order from FERC related to the interconnection. PURA § 37.051(c-1) does not require that a person obtain the certificate from the Commission before seeking an order from FERC. If FERC issues an order regarding a finding of public interest for the facility under the Federal Power Act (FPA), there is the possibility a federal preemption argument precluding further review of the necessity of the project under the state CCN standards.¹⁰ The FPA gives FERC exclusive jurisdiction to regulate the transmission and wholesale of electric energy in interstate commerce,¹¹ and the FPA specifically gives FERC the authority to issue an order requiring the physical connection of transmission facilities of any electric utility with the facilities of the applicant.¹²

If the applicant obtains FERC approval, the Commission may be preempted from revisiting any of its preliminary findings. The Commission has a responsibility to ensure the public interest by stating whether or not the public interest requires the proposed

¹⁰ *Joint Application of Southwestern Electric Power Company, Central Power and Light Company, Houston Lighting and Power Company, and Texas Utilities Electric Company for Certificate of Convenience and Necessity for 345kV Transmission Line*, Docket No. 11270, Final Order at 12.

¹¹ 16 U.S.C. § 824(b)(1).

¹² 16 U.S.C. § 824(i).

interconnection. Specifically, PURA § 37.056(c-1) states that “the commission must determine that the application is consistent with the public interest before granting the certificate.” This responsibility is especially important if the transmission line is not a merchant funded line with a voluntary subscription model but instead a transmission project where the costs will be borne by the public.

4. Must the Commission make a determination on the criteria specified in PURA § 37.056(c) and (d) to make a finding that a certificate is necessary for the service, convenience, or safety of the public under PURA § 37.056(a) or a finding that the public convenience and necessity requires, or will require, the proposed interconnection under PURA § 37.051(c-1)?

Yes, PURA 37.051(c-1) governs this interconnection application. This statutory provision specifically requires the Commission apply PURA § 37.056 in evaluating this application. PURA § 37.056(a) requires that the Commission make a finding of public convenience and necessity before granting a certificate. PURA § 37.056(c) mandates the factors that the Commission must consider in evaluating a CCN application. Accordingly, the Commission must make a determination on the criteria specified in PURA § 37.056(c) and (d) to make a finding that a certificate is necessary for the service, convenience, or safety of the public under PURA § 37.056(a) to support a finding that the public convenience and necessity requires the proposed interconnection under PURA § 37.051(c-1).

5. Does the Commission have authority under PURA §§ 37.051(c) and 37.056 to direct that the criteria identified in PURA § 37.056(c) and (d) must be applied in this proceeding but that no determination will result regarding the factors specified in PURA § 37.056(c)(1) through (c)(3)?

No, the Commission does not have the authority under PURA §§ 37.051(c) and 37.056 to direct that the criteria identified in PURA § 37.056(c) and (d) must be applied, but that no determination will result regarding the factors specified in PURA § 37.056(c)(1) through (c)(3). As discussed above, under PURA § 37.051(c-1), a person may not interconnect a facility to the ERCOT transmission grid that enables additional power to be imported or exported out of the ERCOT grid without obtaining a certificate from the Commission stating that public convenience and necessity requires or will require the interconnection. Grid United, in its application, specifically requests a finding that the public convenience and necessity require, or will require the proposed interconnection. Additionally, before granting the certificate, the

Commission must determine that Grid United's application is in the public interest. Because a certificate is required, the Commission is required to make a determination of the factors specified under PURA § 37.056(c)(1) through (c)(3).

Furthermore, as discussed in response to question no. 3, if the Commission does not make a determination on the factors specified in PURA § 37.056(c)(1) through (c)(3), it is possible a FERC order on the proposed interconnection would preempt Commission consideration of these factors. At this point, Grid United has not committed whether the costs of this transmission line will be borne by the public. If the costs of the line are borne by the public, the factors under PURA § 37.056(c)(1) through (c)(3) should be given heightened scrutiny.

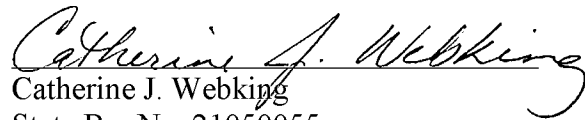
6. Should the Commission determine whether Grid United Texas (and any other owners of the proposed interconnection) will be an electric utility under PURA upon commencement of operation of the proposed interconnection? If so, will Grid United Texas (and any other owners) be electric utilities under PURA upon commencement of operation of the proposed interconnection?

The Commission should determine whether Grid United will be an electric utility under PURA upon the commencement of operation of the proposed interconnection based on whether the transmission line operated by Grid United will be a merchant funded transmission project with voluntary subscription. PURA § 31.002 states that an "electric utility" does not include a corporation as described by Section 32.053 to the extent that the corporation sells electricity exclusively at wholesale and not to the ultimate consumer. Grid United has not provided details in its application on whether it will merely transmit electricity or also intends to sell electricity exclusively at wholesale; nor has Grid United provided any commitments on how it intends to finance the Proposed Project. Therefore, at this time, it cannot be determined from Grid United's application whether Grid United will be an electric utility at the time of commencement of operation of the proposed interconnection. Grid United should be required to provide commitments on whether it intends to sell electricity exclusively at wholesale and whether consumers will bear any costs of the Proposed Project. This is consistent with PURA § 37.051(a), which states that "an electric utility may not directly or indirectly provide service to the public unless the utility first obtains from the commission a certificate that states that the public convenience and necessity requires or will require the installation, operation, or extension of the service."

III. CONCLUSION

NRG respectfully requests that the Commission adopt an order requiring Grid United to provide additional information regarding the Proposed Project consistent with the above recommendations.

Respectfully submitted,



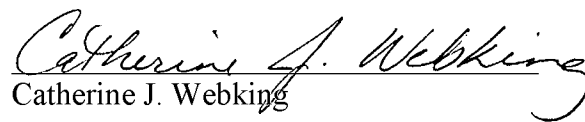
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been emailed to all parties of record on this the 17th day of November, 2022, in accordance with the Commission's Second Order Suspending Rules issued in Project No. 50664.



Catherine J. Webking