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APPLICATION OF GRID UNITED § PUBLIC UTILITY COMMISSION
TEXAS, LLC FOR A CERTIFICATE OF §
CONVENIENCE AND NECESSITY § OF TEXAS
UNDER PURA §§ 37.051(c-1) AND §
37.056(b)(2) §

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.’S
REPLY BRIEF ON THRESHOLD ISSUES

Electric Reliability Council of Texas, Inc. (ERCOT) files this Reply Brief to address the parties’ briefs filed in response to the Public Utility Commission of Texas’ (Commission) Order Requesting Briefing on Threshold Issues, issued on October 25, 2022.

I. THRESHOLD LEGAL/POLICY ISSUES

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?

RESPONSE:

As explained in ERCOT’s Initial Brief filed on November 17, 2022, under a plain reading of Public Utility Regulatory Act¹ (PURA) § 37.056(e), Grid United does not appear to be eligible to be granted a CCN, as none of the existing electric utility facilities that would be interconnected with the facilities contemplated in Grid United’s application are owned by Grid United. After reading the initial briefs of the other parties to this docket, ERCOT’s position remains the same. However, in response to some comments raised by parties, ERCOT notes that although a DC tie facility is similar to a generation resource in that it provides a single point of power injection to the ERCOT system, this similarity does not mean that DC tie facilities *are* generation resources. DC ties are unequivocally transmission facilities because they move electric power from one point to another. For this reason, the limited similarity between DC ties and generation resources should not be taken to impact the applicability of Section 37.056(e).

¹ TEX. UTIL. CODE §§ 11.001-66.017 (PURA).

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?

RESPONSE:

Upon review of the initial briefs of the other parties, ERCOT's position laid out in its November 17, 2022 Initial Brief remains unchanged. ERCOT agrees with the various other parties concluding that PURA § 37.056(b)(2) does not appear to authorize the Commission to grant partial CCN rights for a proposed interconnection design concept. ERCOT reiterates that the Commission should conduct a comprehensive evaluation of need before any order regarding the application is requested at FERC, as any FERC order issued under Section 210 or 211 may limit the Commission's ability to later decide that the project is not needed.

RESPONSE:

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?

RESPONSE:

Upon review of other parties' initial briefs, ERCOT's position remains that subchapter B of chapter 37 of PURA does not appear to authorize the Commission to issue preliminary findings under PURA § 37.056(a) or § 37.051(c-1). As ERCOT and other parties addressed in initial briefs, PURA § 37.055 appears to be the only provision that authorizes the Commission to grant a preliminary order, but only to an applicant that is an electric utility that wants to exercise a right or privilege under a franchise or permit. Grid United's application does not satisfy these requirements.

Irrespective of whether the Commission is authorized to issue a preliminary finding as contemplated above, the Commission should fully consider the need for Grid United's proposed project in this proceeding to avoid any possibility that the issuance of FERC 210 and 211 orders

might limit the Commission's ability to revisit that question in a subsequent CCN proceeding.

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)?

RESPONSE:

ERCOT's position after consideration of other parties' initial briefs continues to be that PURA § 37.056(c) and (d) appears to require the Commission to make a determination on the criteria described in those subsections in order to find that a certificate should be granted under Section 37.056(a). Given this mandate, and because Section 37.051(c-1) plainly requires that the Commission "shall apply Section 37.056 in considering an application under this subsection" without limitation or exception, it is evident that the Commission must consider the PURA § 37.056 (c) and (d) criteria.

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)?

RESPONSE:

After review of other parties' initial briefs, ERCOT's position remains that no authority in PURA §§ 37.051(c) and 37.056 appears to allow the Commission to direct that the Section 37.056(c) and (d) criteria must be applied in this proceeding but that no determination will result regarding the factors in Section 37.056(c)(1) through (3). As further addressed in ERCOT's and other parties' initial briefs, PURA §§ 37.051(c-1) and 37.056(c) appear to mandate without limitation or exception the Commission's consideration and application of all the criteria in PURA § 37.056(c) and (d) in making any determination in this proceeding.

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?

RESPONSE:

Upon review of the initial briefs of the other parties, ERCOT's position laid out in its November 17, 2022 Initial Brief remains unchanged. Because PURA § 37.056(e) appears to only allow a CCN to be granted to an electric utility that owns the facilities to which a proposed transmission facility would interconnect, and Grid United does not own any of the facilities to which its proposed project would interconnect, the proposed CCN could not appropriately be awarded, and for that reason, it is not necessary to consider whether Grid United would become an electric utility upon commencement of operation of the line. However, ERCOT will note that, as raised by other parties, *if* Grid United were somehow able to overcome the restriction of Section 37.056(e), the Commission would then need to consider whether it would be appropriate to consider Grid United an electric utility if it were granted a CCN in light of Grid United's proposed business model, considering that electric utility status may or may not imply that the cost of the constructed facilities could be socialized through the transmission cost of service (TCOS) mechanism, that any facilities for which cost recovery is claimed would need to be justified under traditional need criteria established under PURA, Commission rules, and ERCOT rules, and/or that Grid United could exercise the power of eminent domain to acquire the property needed to construct the facility. These are important public policy considerations that would need to be considered in the event the Commission were to decide that Section 37.056(e) does not bar Grid United's application.

II. CONCLUSION

ERCOT respectfully requests the Commission's consideration of the arguments in this reply brief.

Respectfully submitted,

/s/ Jerry Huerta

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on all parties of record to this proceeding on December 2, 2022, by email, in accordance with Second Order Suspending Rules issued on July 16, 2020 in Project No. 50664.

/s/ Jerry Huerta