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**PUC DOCKET NO. 53758**

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

**GRID UNITED TEXAS’  
RESPONSE TO COMMISSION STAFF’S  
MOTION TO DISMISS**

**December 28, 2022**

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**TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>DISCUSSION .....</b>	<b>3</b>
	<b>A. Dismissal of Grid United’s Application Pursuant to 16 TAC § 22.181(d)(8) is Inappropriate Because the Application States a Claim for Which Relief Can Be Granted .....</b>	<b>3</b>
	<b>1. Identification of Specific Facilities is Not Required at This Stage .....</b>	<b>3</b>
	<b>2. Lack of an ERCOT Study is Not a Basis for Dismissal .....</b>	<b>7</b>
	<b>B. “Good Cause” Does Not Support Dismissal of Grid United’s Application.....</b>	<b>11</b>
<b>III.</b>	<b>CONCLUSION .....</b>	<b>13</b>

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**GRID UNITED TEXAS' RESPONSE TO COMMISSION  
STAFF'S MOTION TO DISMISS**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

On December 2, 2022, the Staff (Staff) of the Public Utility Commission of Texas (Commission) filed a motion to dismiss the application (Application) filed by Grid United Texas LLC (Grid United) in this proceeding. Pursuant to 16 Texas Administrative Code (TAC) § 22.181(e)(3), Grid United's response is due on or before December 22, 2022.<sup>1</sup> However, the Commission is closed on December 22, 2022. The next day the Commission is open for business is December 28, 2022. Therefore, this response is timely filed.<sup>2</sup>

**I. INTRODUCTION**

This Application presents an issue of first impression to the Commission, and Grid United understands that novel issues can create uncertainty among Commission Staff and other interested parties. The requirements of the Public Utility Regulatory Act (PURA) § 37.051(c-1) have never been addressed by the Commission. Consequently, there are differing views as to what PURA requires of an applicant for a High Voltage Direct Current (HVDC) Tie Line certificate of convenience and necessity (CCN), and differing views as to how the Commission should apply its jurisdiction to the circumstances addressed in this proceeding. However, in the wake of Winter Storm Uri, all market participants have a duty to re-evaluate how to better meet the need for

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<sup>1</sup> 16 TAC § 22.181(e)(3) ("The party that initiated the proceeding or any other affected party shall have 20 days from the date of receipt to respond to a motion to dismiss."). Commission Staff's Motion to Dismiss was filed on December 2, 2022, making December 22, 2022, the deadline for Grid United to file a response.

<sup>2</sup> 16 TAC § 22.4(a).

reliable, affordable energy service for all Texans and to propose innovative solutions. In this Application, Grid United seeks to do just that.

Throughout this proceeding, Grid United has worked with the parties to address questions and resolve issues raised by them. Further, Grid United has filed a motion to abate this case to allow for additional time to address parties' concerns and, if appropriate, to amend its Application. Staff now opposes such an abatement and, instead seeks to dismiss this Application entirely. However, Staff's position is not supported by the law and is contrary to its prior filings in this docket.

In response to Order No. 1, Staff acknowledged the novel nature of this Application and stated the following:

Staff recommends that, due to the novel issues raised by the application in this proceeding, the Commission address threshold legal and policy issues at the outset of the proceeding. Without a determination of the standards that apply to the application, Staff is unable to determine the sufficiency of the application. Legal and policy issues that should be addressed at the outset of this proceeding include, but are not limited to, whether the application should include specific locations for the stations that would serve as the end points of the proposed tie line and alternative routes for the proposed tie line and whether a study of the proposed transmission line by ERCOT should be included in the application.<sup>3</sup>

Despite Staff's acknowledgment that it needed guidance from the Commissioners to be able to evaluate the sufficiency of Grid United's Application, Staff now argues—without any further guidance from the Commissioners—that the law supports dismissal of Grid United's Application. Grid United believes that Staff's earlier position was correct: this is a novel case that warrants guidance from the Commission; as such, there is no legal basis to simply dismiss it without ever obtaining such guidance or giving Grid United the opportunity to amend its Application if needed.

Staff's motion to dismiss urges the Commission to dismiss this case, on the basis of 16 Tex. Admin. Code (TAC) § 22.181(d)(8) and (11) for failure to state a claim for which relief can be granted and for other good cause shown, without any direction from the Commission that would warrant the conclusions now stated in Staff's motion. As seen below, Grid United's Application does clearly state a claim for relief, as the Application seeks determinations the Commission has

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<sup>3</sup> *Commission Staff's Response to Order No. 1*, at 1–2 (Aug. 4, 2022) (emphasis added).

authority to give under PURA.<sup>4</sup> Moreover, PURA explicitly allows the Commission authority to grant partial certification rights, and this is the relief that Grid United seeks.<sup>5</sup>

Staff's current interpretation of the applicable statutes, rules, and Commission precedent would unnecessarily constrain the Commission's broad authority granted to it under PURA, including the authority to "do anything specifically designated or implied that is necessary and convenient to the exercise of that power and jurisdiction."<sup>6</sup> To accept Staff's arguments in justification of its motion to dismiss would read into the statutes and rules non-existent procedural and substantive constraints on the Commission's authority that are quite simply not there—a fact which Staff previously acknowledged when it indicated it needed guidance from the Commissioners on the standards to apply to this Application. With this in mind, Grid United responds to Staff's motion to dismiss below.

## **II. DISCUSSION**

### **A. Dismissal of Grid United's Application Pursuant to 16 TAC § 22.181(d)(8) is Inappropriate Because the Application States a Claim for Which Relief Can Be Granted**

#### **1. Identification of Specific Facilities is Not Required at This Stage**

First, Staff contends that Grid United's Application should be dismissed because PURA § 37.051(c-1) specifically refers to interconnection of a "facility" and, thus, only an application that identifies specific facilities may be considered sufficient. Although Staff now takes the position that specific facilities must be identified in an HVDC CCN application, it previously noted in this case that it needed guidance from the Commissioners on "whether the application should include specific locations for the stations that would serve as the end points of the proposed tie line and alternative routes for the proposed tie line."<sup>7</sup> Given Staff's previous uncertainty, it is hard to see how Staff can now contend that the law clearly warrants dismissal of the Application.

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<sup>4</sup> See *Application of Grid United Texas' for a CCN Under PURA §§ 37.051(c-1) and 37.056(b)(2)*, at 000006 (Jul. 5, 2022) (herein referred to as the *Application*).

<sup>5</sup> See *Application*, at 000006 (stating that "what Grid United seeks in this Application is partial authorization from the Commission regarding the propriety and necessity of the interconnection itself...").

<sup>6</sup> PURA § 14.001.

<sup>7</sup> *Commission Staff's Response to Order No. 1*, at 1–2 (Aug. 4, 2022) (emphasis added).

As noted in prior filings, the parties' primary disagreement in this case rests on whether the determinations to be made in a CCN proceeding may be bifurcated. PURA § 37.051(c-1) states that a person "may not interconnect a facility to the ERCOT transmission grid that enables additional power to be imported into or exported out of the ERCOT power grid unless the person obtains a certificate from the commission stating that public convenience and necessity requires or will require the interconnection." Put simply, this requirement does not state what must be included in an application for partial CCN rights, but merely indicates a prohibition on interconnection prior to obtaining the full CCN rights. Nothing in PURA dictates how the CCN is obtained, or sets the process for how the CCN is to be approved. Rather, the statute merely addresses all the factors the Commission must consider before fully granting a CCN to interconnect.

Prior to granting a CCN for an interconnection identified in PURA § 37.051(c-1), the Commission must consider the factors in PURA § 37.056 and also "must determine that the application is consistent with the public interest before granting the certificate."<sup>8</sup> In this docket, Grid United seeks determinations on some, but not all, of these considerations identified in the statute. Clearly the Commission has authority to make such determinations—in fact it must make such determinations before it ever may grant a CCN for a proposed interconnection. Thus, there is no reasonable basis to assert that Grid United has "failed to state a claim for which relief can be granted." No party can dispute that the Commission has the authority to determine the issues identified in Grid United's Application and that the relief that Grid United seeks is squarely within the power of the Commission to grant. And, in prior dockets, when faced with a filing that seeks

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<sup>8</sup> PURA § 37.051(c-1).

relief the Commission is authorized to grant, Commission ALJs and the Commission itself have denied motions to dismiss.<sup>9</sup>

In fact, the Commission routinely makes the same determinations sought by Grid United here. The only dispute is regarding the “process” by which the Commission will make such determinations. Grid United contends that the process may be bifurcated, while Staff contends it may not. But, to be clear, there is no statute, rule, or other Commission precedent that supports Staff’s position that bifurcation is prohibited. Rather, prior Commission precedent establishes that bifurcation is appropriate in CCN proceedings. Specifically, in Docket No. 19950, Corpus Christi Power & Light Company (CCP&L) applied for a CCN as a newly-created company seeking to be an electric utility.<sup>10</sup> The Commission determined that resolution of CCP&L’s CCN application required bifurcation of the relevant issues into three separate phases, for which distinctive hearings and proposals for decision would be issued, if necessary, based upon the findings that were made in the previous phase.<sup>11</sup> That case clearly demonstrates that the Commission has previously welcomed the type of pragmatic approach that Grid United is proposing in this docket. That approach is particularly relevant here (and future applications under PURA § 37.051(c-1)), where it is critical to the independence of the ERCOT grid that Grid United apply for—and receive—an order from the Federal Energy Regulatory Commission (FERC) disclaiming jurisdiction over ERCOT as a result of the proposed interconnection. Any determinations by the Commission

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<sup>9</sup> See, e.g., *Complaint of Aspire Commodities, LLC Against the Electric Reliability Council of Texas, Inc.*, Docket No. 49673, Order No. 6 at 6 (Dec. 5, 2019) (finding that Aspire’s complaint fell “within the scope of complaints authorized by PURA § 39.151 and 16 TAC § 22.251” and, therefore, denying the motion to dismiss); see also *Complaint of McKamie Real Estate Services, LLC Against Texas New-Mexico Power Company*, Docket No. 53195, Order No. 5 at 1 (Jun. 6, 2022) (“McKamie Real Estate Services has alleged facts that, if proved, would entitle it to relief within the authority of the Commission. In other words, McKamie Real Estate Services has stated a type of claim for which relief can be granted by the Commission. While Reliant may dispute the veracity of the facts alleged in the complaint, Reliant has not shown that the Commission is unable to grant the relief”); *Application of CenterPoint Energy Houston Electric LLC for a Financing Order*, Docket No. 30485, Preliminary Order at 5 (Dec. 20, 2004) (“Accordingly, having concluded that neither Commission rules nor PURA prohibit CenterPoint’s filing... Commission concludes that there is no legal basis for concluding that CenterPoint’s application is premature. The Commission takes note of the joint motion to dismiss CenterPoint’s application filed on December 6, 2004 by a number of intervenors. This motion presented arguments on the timing of CenterPoint’s application similar to those pressed in the parties’ briefs and addressed above. For the reasons discussed in this Order, the Commission finds the motion to lack legal merit.”).

<sup>10</sup> *Application of Corpus Christi Power & Light Company for a Certificate of Convenience and Necessity in Nueces and San Patricio Counties, Texas*, Docket No. 19950 (Sept. 30, 2002).

<sup>11</sup> *Application of Corpus Christi Power & Light Company for a Certificate of Convenience and Necessity in Nueces and San Patricio Counties, Texas*, Docket No. 19950, Preliminary Order at 12 (Nov. 24, 1998).

beyond those sought by Grid United in this Application without an order by the FERC disclaiming jurisdiction would be extraneous and a significant waste of time and resources by all parties involved if the Commission intends to preserve the ERCOT federal jurisdictional status quo with respect to interconnections to neighboring grids.

Staff asserts that an evaluation of the criteria listed in PURA § 37.056(c) is required in order for the Commission to grant the relief requested at this stage of the proceeding, which Staff alleges the Commission cannot do without a detailed description of the specific facilities to be certificated and their location.<sup>12</sup> This is where Staff's interpretation mischaracterizes PURA's requirements and exceeds the limits of any reasonable interpretation. As has been stated by Grid United and Oncor in the briefing on threshold issues filed in this proceeding, Staff's assertion fails to distinguish between the requirements of PURA § 37.051(c-1), which pertain to filing an application for a CCN for an HVDC tie line, and the factors outlined by PURA § 37.056, which must be considered before the Commission finally approves the CCN. To be perfectly clear, there is simply no limitation in the statute that would prevent the Commission from bifurcating the proceeding to allow the Commission to determine that the public convenience and necessity requires, or will require, the proposed interconnection. The Commission would simply be applying PURA § 37.056(b)(2) at this stage, as required under PURA § 37.051(c-1), for the limited purpose of determining whether the proposed project is necessary for the service, accommodation, convenience, or safety of the public and granting Grid United partial rights and privileges under the CCN.

A subsequent full analysis of the remaining factors contained in PURA § 37.056(c) would then follow prior to the Commission's final approval of the project and any granting of full rights and privileges under the CCN would be based on further information regarding the specific facilities filed with the Commission following an order from the FERC disclaiming jurisdiction over ERCOT as a result of the proposed interconnection. Staff has presented no argument or evidence sufficient to prove that the process outlined above does not satisfy the applicable statutory requirements.

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<sup>12</sup> *Application of CenterPoint Energy Houston Electric LLC for a Financing Order*, Docket No. 30485, Preliminary Order at 5 (Dec. 20, 2004).

In establishing the Commission's certification rights under PURA § 37.051(c-1) and 37.056, the Texas Legislature clearly gave the Commission broad authority to apply the identified criteria as it deems appropriate based on the rights being granted.<sup>13</sup> Likewise, the authority given to the Commission in PURA § 37.056(b)(2) to grant a partial exercise of a certificated right or privilege is not limited to a particular aspect or right.<sup>14</sup> Therefore, the Commission has the ability to grant Grid United the relief it seeks and dismissal of the Application pursuant to 16 TAC § 22.181(d)(8) is not supportable.

## **2. Lack of an ERCOT Study is Not a Basis for Dismissal**

Just as with the issue of specific facilities, Staff has reversed its prior position on the requirement of an ERCOT study at this stage of the process. Previously, in response to Order No. 1, Staff stated that Commission guidance was needed on “whether a study of the proposed transmission line by ERCOT should be included in the application.”<sup>15</sup> Without such guidance, Staff asserted it “is unable to determine the sufficiency of the application.” Now, however, without any further guidance from the Commissioners, Staff contends that such study must be included or the Application is deficient. Staff's position misconstrues the nature of Grid United's Application.

Under Commission rules, specifically 16 TAC § 25.101(b)(4), an “*application for a tie line* must include a study of the tie line by the ERCOT independent system operator.” (Emphasis added). In this proceeding, Grid United has not submitted an application for a tie line; rather it has submitted an application for partial CCN rights related to a project that ultimately would result in the construction of a tie line. As noted previously, when Grid United submits a CCN application for full CCN rights associated with a tie line, it will submit additional information related the other required CCN elements. But, for now, Grid United has not submitted an application for construction and operation of a tie line. Nor would it be reasonable to do so without the necessary FERC approvals disclaiming jurisdiction over ERCOT as a result of the proposed interconnection.

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<sup>13</sup> See *Southwest Electric Power Company, et al. v. Public Utility Commission of Texas*, 419 S.W.3d 414, 426 (Tex. App—Amarillo 2012, pet. denied) (“The PUC is given the authority to “do anything specifically designated or implied by [PURA] that is necessary and convenient to the exercise of” its broad regulatory jurisdiction.”); See also PURA § 14.001.

<sup>14</sup> *Southwest Electric Power Company, et al.*, 419 S.W.3d at 428 (“We note again that the Legislature granted the PUC broad regulatory authority, and the breadth of this authority is reflected in the PUC's mission. We also note that the PUC is specifically authorized to grant a CCN in part.”).

<sup>15</sup> *Commission Staff's Response to Order No. 1*, at 1–2 (Aug. 4, 2022) (emphasis added).

Accordingly, Grid United has submitted an application only for determination of certain requisite findings that are necessary for a tie line CCN sufficient for Grid United to pursue an order from the FERC. An ERCOT study regarding interconnection of specific facilities is immaterial without a FERC order disclaiming jurisdiction over ERCOT as a result of the proposed interconnection.

For the reasons articulated above, sound and established policy related to the independence of the ERCOT grid advocate for the Commission directing Grid United to obtain an appropriate order from the FERC disclaiming jurisdiction over ERCOT as a result of the proposed interconnection prior to consideration of specific interconnection facilities by ERCOT and the Commission. Even if an ERCOT study were deemed necessary at this stage of the Commission's consideration, the appropriate remedy is not dismissal but rather a directive that Grid United coordinate with ERCOT to obtain the study.<sup>16</sup> As the Commission's dismissal rule notes, dismissal for insufficiency of an application is appropriate only "after repeated determinations that the application is insufficient."<sup>17</sup> Here, there has been no prior finding of insufficiency nor any opportunity for Grid United to remedy any alleged deficiency. It is not appropriate to circumvent the dismissal rule's clear requirement that an applicant be provided the opportunity to cure a deficiency in the application by instead framing the perceived deficiency as "good cause" for dismissal under 16 TAC § 22.181(d)(11). The Commission has refused to dismiss proceedings in the past when the applicant had not been given repeated attempts to amend the application and cure the deficiency.<sup>18</sup> In fact, CCN applicants are routinely given the opportunity to amend their application before Staff seeks dismissal. The following are just a small sampling of the many dockets demonstrating that amendment is proper before dismissal is sought:

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<sup>16</sup> *Application of the City of Garland to Amend a Certificate of Convenience and Necessity for the Rusk to Panola Double-Circuit 345-kV Transmission Line in Rusk and Panola Counties*, Docket No. 45624, Order on Rehearing at 4 (May 23, 2017) ("The Commission also concludes that many of the proposed conditions depend on ERCOT completing studies or other activities that should be included in an order to ERCOT to undertake and complete those activities.").

<sup>17</sup> 16 TAC § 22.181(d)(7).

<sup>18</sup> *Application of Simply Aquatics Inc. for a Price Index Rate Adjustment (El Pinion)*, Docket No. 48269, Commissioner Botkin Memorandum (Feb. 6, 2019) ("I do not believe that the facts in this proceeding support dismissal for failure to amend after repeated determinations that the application was insufficient. That is because I can only locate one determination of insufficiency by the ALJ in this proceeding. (Commission Staff made more than one recommendation that the application be found insufficient, but those recommendations are not determinations.) Therefore, I recommend that the Commission adopt in part and reject in part the proposal for decision, dismissing this proceeding without prejudice solely on the basis of failure to prosecute.").

*Application of Southern Tradewinds LP and Eichholz Water Services, LLC for Sale Transfer or Merger of Facilities and Certificate Rights in Kendall County*, Docket No. 50326 (May 17, 2021). (Five opportunities for amendment were allowed before Staff sought dismissal).

*Application of Quadvest, L.P. to Amend Its Certificates of Convenience and Necessity in Harris County*, Docket No. 51009 (Jun. 1, 2021). (Four opportunities for amendment were allowed before Staff sought dismissal).

*Petition of Willowbrook Water Systems to Discontinue Water Service and Cancel Its Certificate of Convenience and Necessity*, Docket No. 51552 (Oct. 6, 2022). (Multiple amendment opportunities allowed).

*Application of East Houston Utilities, Inc. to Amend Its Certificate of Convenience and Necessity in Harris County*, Docket No. 51614 (Jun. 2, 2022). (ALJ allowed seven amendment attempts).

*Application of Sun Water Supply Corporation to Amend Its Water Certificate of Convenience and Necessity in Fisher, Jones, and Taylor Counties*, Docket No. 49530 (Mar. 13, 2020). (Three opportunities for amendment were allowed before Staff sought dismissal).

*Application of City of Gregory to Obtain Certificates of Convenience and Necessity in San Patricio County*, Docket No. 45489 (Jul. 8, 2019).

*Application of Entergy Texas, Inc. to Amend Its Certificate of Convenience and Necessity for the Millbend 138-kV Transmission Line Project in Montgomery County*, Docket No. 52241 (Nov. 3, 2022).

*Application of El Paso Electric Company to Amend Its Certificate of Convenience and Necessity for the Seabeck-to-San Felipe 115-kV Transmission Line in El Paso County*, Docket No. 51480 (Apr. 29, 2022).

*Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a 138-kV Double-Circuit Transmission Line in Collin and Denton Counties*, Docket No. 43878 (Mar. 30, 2016).

*Application of Oncor Electric Delivery Company, LLC to Amend Its Certificate of Convenience and Necessity for A Proposed 138-Kv Transmission Line in Denton, Tarrant and Wise Counties (Hicks-Elizabeth Creek CCN)*, Docket No. 42087 (Dec. 19, 2014).

*Application of El Paso Electric Company to Amend Its Certificate of Convenience and Necessity For the Proposed Montana Power Station to Caliente Substation 115-kV Transmission Line in El Paso County*, Docket No. 41360 (Mar. 10, 2014).

*Application of El Paso Electric Company to Amend Its Certificate of Convenience and Necessity for the Proposed Montana Power Station Intersect with Caliente to Coyote 115-kV Transmission Line in El Paso County*, Docket No. 41359 (Aug. 18, 2014).

*Application of Rayburn Country Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Henderson and Van Zandt Counties*, Docket No. 32707 (Mar. 11, 2009).

In this case, Grid United has sought abatement so that it may consider its **first** amendment to the Application. Thus, dismissal would simply not be appropriate at this stage. Staff appears to recognize this, as it has acknowledged that it would be appropriate to allow Grid United to amend its Application. In particular, in responding to Grid United's abatement motion, Staff explicitly states that it "recommends the Commission either dismiss Grid United's application or allow Grid United to amend the application in this docket . . ."<sup>19</sup> Thus, Staff acknowledges the propriety of allowing Grid United the opportunity to address any alleged deficiencies prior to a dismissal.

Although Grid United does not believe the absence of an ERCOT evaluation is a deficiency in the Application or good cause for dismissal of this proceeding, it remains willing to work with ERCOT to obtain any necessary study. For many months prior to and subsequent to the filing of the Application, Grid United has attempted, and will continue to attempt, to work cooperatively with ERCOT to develop an agreed scope for an ERCOT evaluation and study referenced in 16 TAC § 25.101(b)(4). Further, Grid United has offered to fund any costs and provide ERCOT the resources necessary to perform the necessary studies and evaluations. To the extent the Commission believes an ERCOT study is required at this stage of the Commission's evaluation, the ALJ should order ERCOT to work cooperatively with Grid United to have the study performed and should abate this case until such time as the study is completed. There is no harm to any parties and, in fact, such is consistent with the parties' prior positions, the rules that ordinarily allow for opportunities to cure any deficiencies in an application prior to dismissal, and the clear Commission precedent allowing amendment prior to dismissal. Therefore, granting the motion to abate the proceeding to allow Grid United to amend its Application preserves the considerable efforts of the parties up to this point, allows the Commission to provide guidance as to the

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<sup>19</sup> *Commission Staff's Response to Grid United's Motion to Abate Proceedings*, at 2 (Dec. 8, 2022) (emphasis added).

importance of the ERCOT study and the type of analysis it wishes ERCOT to perform, and ultimately would allow the desired ERCOT study to be obtained.

**B. “Good Cause” Does Not Support Dismissal of Grid United’s Application**

Staff also cites to 16 TAC § 22.181(d)(11) as a basis for dismissal. That provision allows for dismissal for “good cause.” Staff has not provided any basis in its motion to dismiss other than the alleged deficiencies noted and discussed above. There is no “good cause” that would warrant dismissing a proceeding that is many months along and for which the parties have provided significant briefing, when abatement and amendment would accomplish the same purported goals.<sup>20</sup> Staff does not argue specific good cause in the motion to dismiss. Grid United contends there is none. Fairness, equity, and the Commission’s rules regarding allowing amendment of applications all support abatement over dismissal.<sup>21</sup>

Although not contained in its motion to dismiss, Staff appears to argue in its response to the motion to abate that Grid United’s Application should be dismissed so that the Commission can open a project to decide the scope of the required ERCOT study and any other information the Commission decides it should have to properly evaluate the application.”<sup>22</sup> Staff then draws a comparison between this project and the plans for the City of Lubbock and Rayburn Country Electric Cooperative, in which the Commission conducted plans to transfer load from SPP to ERCOT first.<sup>23</sup> PURA provided the Commission the authority to adopt rules at the time Section 37.051(c-1) was adopted in 2015 and the Commission has already conducted a rulemaking

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<sup>20</sup> *Application of 1-800-RECONEX, Inc. for an Amendment to Its Service Provider Certificate of Operating Authority*, Docket No. 29978, Order No. 1 at 1 (Jul. 29, 2004) (abating the proceeding in the interest of efficiency, pending receipt of an amended application, requiring the Applicant to file an amended application, and noting that failure to file an amended application on a timely basis might result in dismissal of the proceeding).

<sup>21</sup> 16 TAC § 22.181(d)(7). *See also Application of Gulf Water Benefaction Company for Authority to Increase Rates Within Harris County*, Docket No. 3487 (Jan. 8, 1981) (“the General Counsel also moved that Gulf’s application be dismissed because of its failure to conform with the Commission’s substantive and procedural rules concerning the required contents of rate-filing applications. In its argument supporting this motion the General Counsel’s office cited at least eight specific deficiencies in Gulf’s application. In order to give Gulf time to respond to the motion by amending its application, an action Gulf indicated could be accomplished within a short period of time, the conference was recessed subject to the Examiner’s Order that all necessary supporting documents and amendments be filed by Gulf.”).

<sup>22</sup> *Commission Staff’s Response to Grid United’s Motion to Abate Proceedings*, at 2.

<sup>23</sup> *Commission Staff’s Response to Grid United’s Motion to Abate Proceedings*, at 2–3.

to implement that legislation.<sup>24</sup> Consequently, Staff is recommending that Grid United abandon enormous investment in terms of time and resources on a project that has substantial economic and reliability benefits to the State of Texas in order to postpone the project for potentially many months to allow the Commission to conduct a second PURA § 37.051(c-1) rulemaking proceeding that it has already had seven years to initiate. If Staff now believes a second rulemaking is in order years after the passage of PURA § 37.051(c-1) it is free to recommend that to the Commission; however, it is not an adequate basis for the dismissal of a proceeding that was filed six months prior to Staff's motion and to which the parties have devoted considerable time and resources.

In apparent support for its motion, Staff cites to the preliminary order in Docket No. 34362<sup>25</sup> and claims that Grid United's request for relief is inconsistent with this prior Commission precedent. However, there are several important factors that render Docket 34362 not only distinguishable from the facts of the current case, but also ultimately irrelevant to this proceeding. First, and most notably, the preliminary order cited by Staff involves a proceeding where Lone Star Transmission LLC (Lone Star) was requesting to be designated as an electric utility and granted a CCN with no associated project as part of the application.<sup>26</sup> Lone Star intended to amend its CCN when it had specific facilities to own or operate at some unidentified point in the future.<sup>27</sup> Here, Grid United is not seeking a CCN for the purpose of becoming an electric utility and has provided the Commission with a preliminary showing of the project Grid United intends to build. Second, Lone Star was not seeking partial CCN rights in order to construct an HVDC tie line project, and the Commission issued the preliminary order cited by Staff in 2007—some eight years before PURA § 37.051(c-1) was adopted by the legislature. Thus, not only was Lone Star seeking significantly different relief under considerably different circumstances than Grid United, but the Commission was opining on Lone Star's application prior to the legislature's adoption of the relevant law in this proceeding, PURA § 37.051(c-1).

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<sup>24</sup> *Rulemaking Regarding DC Ties Pursuant to SB 933, Municipally-Owned Utilities Pursuant To SB 776, and Non-ERCOT Utilities Pursuant to HB 1535 of the 84th Legislature (R.S.); Competitive Renewable Energy Zones, Project No. 45124, Approved at the June 9, 2016 Open Meeting (Jun. 15, 2016).*

<sup>25</sup> *Application of Lone Star Transmission LLC for a Certificate of Convenience and Necessity and Certain Regulatory Clarifications, Docket No. 34362, Preliminary Order at 3 (Nov. 27, 2007).*

<sup>26</sup> *Id.* at 5.

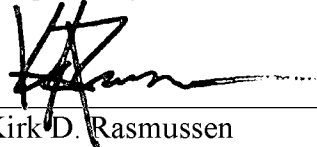
<sup>27</sup> *Id.*

However, despite Staff's characterization of Commission precedent, *Lone Star* does provide some useful guidance for this proceeding. In referencing a case involving Corpus Christi Power & Light that proposed a "novel business plan that contemplated minimal construction of facilities," the Commission noted that it split the docket into multiple phases with the first phase involving consideration of the factors that qualify an applicant as an electric utility.<sup>28</sup> Further, and most importantly, the determination as to whether Lone Star's application met the relevant statutory criteria to proceed was addressed by the Commission. This Commission should be provided the same opportunity to provide guidance and make necessary predicate determinations related to Grid United's proposed HVDC tie line.

### III. CONCLUSION

In conclusion, Grid United requests that the Commission deny Staff's motion to dismiss Grid United's application pursuant to 16 TAC § 22.181(d)(8) and (11) as Grid United has clearly stated a claim for which the Commission has the authority to grant relief and the absence of the ERCOT Study can be addressed through granting Grid United's motion to abate and a subsequent amendment to the application, if necessary.

Respectfully submitted,



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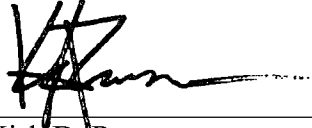
**ATTORNEYS FOR GRID UNITED TEXAS LLC**

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<sup>28</sup> *Id.*

**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served on all parties of record on this date via the Commission's Interchange in accordance with the Commission's order in Docket 50664 suspending PUC Procedural Rule 22.74.

A handwritten signature in black ink, appearing to read 'K. Rasmussen', is written over a horizontal line.

Kirk D. Rasmussen