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PUC DOCKET NO. 53758

**APPLICATION OF GRID
UNITED TEXAS LLC FOR
PARTIAL CERTIFICATE OF
CONVENIENCE 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**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

TEXAS INDUSTRIAL ENERGY CONSUMERS' RESPONSE TO ORDER NO. 10

I. INTRODUCTION

Texas Industrial Energy Consumers (TIEC) files these comments in response to Order No. 10, which requested briefing on whether Grid United Texas, LLC (Grid United) should be permitted to withdraw its application without prejudice to refiling. As discussed below, the Commission should dismiss Grid United's application with prejudice because there is no good cause to give Grid United the opportunity to refile a legally deficient petition.

II. ARGUMENT/AUTHORITIES

The Commission's procedural rules break down the withdrawal of an application into two steps: (1) determining whether withdrawal is permitted, and (2) if so, determining whether the dismissal should be with or without prejudice.¹ For the first step, because Grid United's application was placed on an open meeting agenda for consideration of a preliminary order,² 16 TAC § 22.181(g)(4) would apply. That provision reads:

(g)(4) A request to withdraw an application with or without prejudice after the application has been placed on an open meeting agenda for consideration of . . . a preliminary order with threshold legal or policy issues may be granted only upon a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

¹ See 16 TAC § 22.181(g).

² A draft preliminary order was issued on February 15, 2023, for consideration at the February 16, 2023 open meeting. See Draft Preliminary Order with Memorandum (Feb. 15, 2023).

Accordingly, Grid United must show good cause to withdraw its application, considering the importance of the matter being addressed to the jurisprudence of the Commission and the public interest.³ As Grid United noted, the Commission's Preliminary Order establishes good cause for Grid United to withdraw its application because the Commission has determined that Grid United Texas' pending application may not be granted as it currently exists.⁴ However, such a determination does not necessarily mean that Grid United's application should be dismissed without prejudice, as Grid United seems to assume.⁵

Pursuant to Procedural Rule 22.181(g)(5), dismissal *with* prejudice is the default upon withdrawal of an application, and the trier of fact must separately find good cause to allow dismissal without prejudice.⁶ There is not good cause in this instance. As the Preliminary Order states, Grid United's application cannot be granted because, among other reasons, Grid United is prohibited from owning transmission facilities⁷ and the Commission cannot grant a partial CCN.⁸ In light of the Preliminary Order, there is no potential value in allowing Grid United to refile an identical or substantially similar application. Further, while Grid United's motion to dismiss provides good cause for allowing it to withdraw its application, Grid United does not attempt to prove that there is good cause for that withdrawal to be without prejudice to refiling.⁹ Therefore,

³ See 16 TAC § 22.181(g)(4).

⁴ Grid United Texas' Motion to Withdraw Application at 1 (Feb. 17, 2023).

⁵ *Id.* ("To the extent that good cause must be found under 16 Tex. Admin. Code § 22.181(g)(4), the Commission's discussion at the open meeting and legal determinations reflected in the Draft Preliminary Order adopted by the Commission establish such good cause, as the Commission has determined that Grid United Texas' pending application may not be granted as it currently exists. Therefore, it is appropriate to allow Grid United Texas to withdraw the application without prejudice and to dismiss this docket.").

⁶ 16 TAC § 22.181(g)(5) ("If a request to withdraw an application is granted, the presiding officer shall issue an order of dismissal stating whether the dismissal is with or without prejudice. ***If the presiding officer finds good cause***, the order of dismissal under this paragraph shall not be with prejudice, unless the applicant requests dismissal with prejudice.") (emphasis added).

⁷ Preliminary Order at 3 ("Thus, under no circumstance can the Commission legally grant Grid United Texas a CCN or any rights emanating from a CCN for the proposed interconnection.") (Feb. 16, 2023).

⁸ Preliminary Order at 12-17.

⁹ Grid United Texas' Motion to Withdraw Application at 1.

the Commission should approve of Grid United's application to withdraw its application, but the matter should be dismissed *with* prejudice.

III. CONCLUSION

As discussed above, dismissal without prejudice must be based on a finding of good cause, and no good cause exists here because according to the Preliminary Order, there is no potential value in allowing Grid United to refile an identical or substantially similar application. Accordingly, the Commission should dismiss Grid United's application with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John R. Hubbard, Attorney for TIEC, hereby certify that a copy of this document was served on all parties of record in this proceeding on this 8th day of March, 2023 by electronic mail, facsimile, and/or First Class, U.S. Mail, Postage Prepaid.

/s/ John R. Hubbard

John R. Hubbard