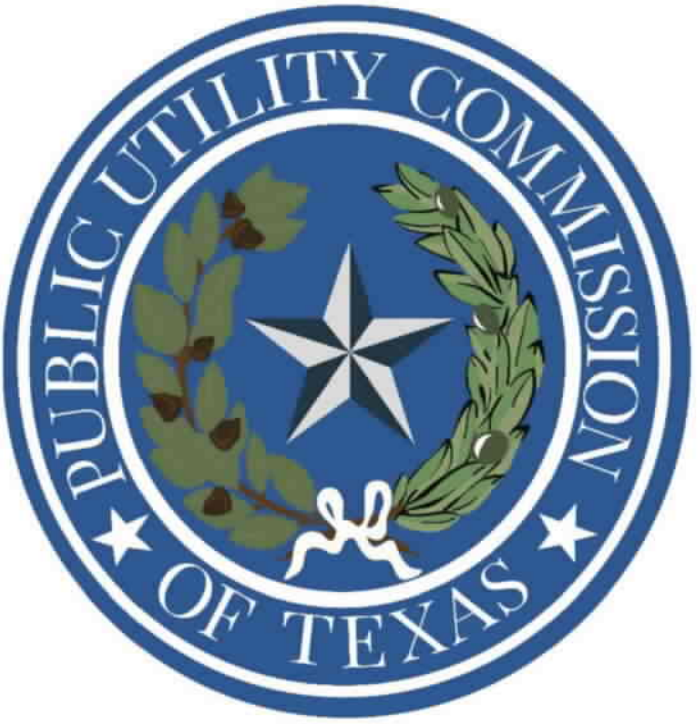

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PUC PROJECT NO. 54224

COST RECOVERY FOR SERVICE TO DISTRIBUTED ENERGY RESOURCES (DERS)	**§**	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

CPS ENERGY'S RESPONSIVE COMMENTS IN PROJECT NO. 54224

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

The City of San Antonio, acting by and through the City Public Service Board (CPS Energy), submits these comments and executive summary to the Public Utility Commission of Texas (Commission) in Project No. 54224.

On September 9, 2024, Commission Staff made a filing in this project requesting comments from market participants and other interested persons on various questions related to distributed energy resources. CPS Energy appreciates Commission Staff seeking input from interested stakeholders and believes that such input will be critical to the Commission's determination of important issues related to the regulatory handling of distributed energy resources and distributed energy storage resources. Below, CPS Energy submits its responsive comments to the questions presented in Commission Staff's filing of September 9, 2024.

I. INTRODUCTORY COMMENTS

CPS Energy recognizes the challenging task before the Commission in attempting to address these issues that will impact the future of the Texas electric grid. However, in addressing these issues, the Commission is constrained to do so within the express powers it has been given by the legislature and within the other clear statutes governing the matters addressed. In this regard, the legislative constraints on the Commission vary depending on whether the Commission is attempting to regulate investor-owned utilities (IOUs), municipally-owned utilities (MOUs), electric cooperatives (Co-ops), or river authorities. This makes it challenging to implement a one-size-fits-all approach and also presents significant jurisdictional concerns in regard to MOUs and Co-ops. Under the Public Utility Regulatory Act (PURA), the Commission has broad authority to regulate IOUs, but limited authority over MOUs and Co-ops. Accordingly, when evaluating rules to address distribution energy resources (DERs) and distribution energy storage resources (DESRs), it will be important for the Commission to consider the extent of its authority over MOUs and Co-ops.

MOUs and Co-ops have local distribution systems that are affected in meaningful ways by DERs and DESRs. By law, they have jurisdiction over the management of their own systems, including regarding rate recovery for the use of their system resources. It is imperative—and the law recognizes this—that MOUs have the ability to continue to manage their distribution systems to ensure the reliability of service to their distribution customers, up to and including the ability to disconnect and limit the operation of DERs and DESRs when needed for the protection of the distribution system's integrity or the health and safety of employees and the public. Any rules crafted by the Commission related to DERs and DESRs should recognize and provide for the protection of local control over distribution systems and ensure that costs associated with the use of local systems are properly recovered within the law governing MOUs. The comments submitted by the Texas Public Power Association (TPPA) recognize and address these concerns, and CPS Energy joins in and supports those comments of TPPA. However, CPS Energy also submits these additional comments to provide further information for the Commission's consideration. With these key points in mind, CPS Energy now turns to the specific questions presented by the Commission.

II. RESPONSE TO COMMISSION STAFF'S QUESTIONS

In its filing of September 9, 2024, Commission Staff identified questions on which it was seeking comments from market participants and other interested persons. CPS Energy's responsive comments to those questions are set out below.

Question 1: Can the Commission implement the proposed standard distribution resource interconnection allowance without explicit statutory language authorizing such an allowance?

The Commission does not have authority to implement what essentially would amount to a cost-shifting tax on other ratepayers absent express legislative authority to do so. The Texas Supreme Court has been unequivocal about the Commission's authority, stating:

> "The PUC is a creature of the legislature and has no inherent authority. This is true of every state administrative agency, and as a result every such agency has only those powers *expressly conferred* upon it by the Legislature."[1]

The Texas Supreme Court is clear: the Commission has only the powers expressly conferred upon it by the legislature. Thus, if the legislature has not given the PUC authority to implement an interconnection allowance (and thus shift the costs associated with such interconnections), the PUC

[1] *PUC of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001) (Emphasis added).

cannot on its own implement such. The Commission does not have inherent authority to do so, because as the Texas Supreme Court has noted, *the Commission has no inherent authority at all.* So, unless the Commission can point to an express legislative grant of authority to implement a "standard distribution resource interconnection allowance," it may not implement such an allowance.

Question 2: What are the advantages and disadvantages of the proposed standard distribution resource interconnection allowance? Is a standard distribution resource interconnection allowance a viable option to move forward? If not, why?

While the uniformity of a standard interconnection allowance may have intuitive appeal, it fails to recognize that there are meaningful differences between distribution systems that make such a standard allowance infeasible. These differences are also part of the reason the legislature has seen fit to ensure that MOUs and Co-ops have authority over their own distribution systems, including the recovery of costs associated with such systems. Put simply, a one-size-fits-all approach may be appropriate for the ERCOT transmission system—which is essentially an interconnected grid of transmission voltage level facilities—but such is not equally appropriate for distribution systems, which are essentially separate "islands" of individualized systems operating at multiple voltage levels to serve different customer classes.

Further, a standard interconnection allowance is not permissible under the law, as it currently exists, when it comes to the use of distribution system resources. PURA § 35.004(c) states:

> When an electric utility, electric cooperative, or transmission and distribution utility [which includes MOUs] provides wholesale transmission service within ERCOT at the request of a third party, the commission shall ensure that the utility recovers the utility's reasonable costs in providing wholesale transmission services necessary for the transaction from the entity for which the transmission is provided so that the utility's other customers do not bear the costs of the service. (Emphasis added).

Thus, the law requires that the costs associated with providing wholesale transmission service must be paid by the party receiving the services, and may not be shifted to other customers of the utility. When wholesale transmission service is provided at distribution voltage, the distribution system facilities are being utilized and the entity receiving the wholesale transmission service must pay for the use of the distribution system. PURA requires such, and the Commission may not implement rules that disregard this clear requirement of PURA. The law is clear that an agency may not exercise a new power, or a power contradictory to the statute, on the theory that such a power is expedient for administrative purposes.[2]

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[2] *City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d at 316 (Tex. 2001).

Question 3: At what amount should a standard distribution resource interconnection allowance be set? Should the applicability or amount of the allowance vary based on the size of the resource?

Because the Commission lacks authority to set a standard interconnection allowance, CPS Energy believes this question is moot. Ultimately, this question should be addressed by the legislature if it chooses to provide for such an allowance.

Question 4: How should the interconnection costs covered by such an allowance be reallocated? What effects would this have on other customers?

As noted above, CPS Energy believes the Commission may not reallocate costs associated with an interconnection to a distribution system for the purpose of obtaining wholesale transmission service. Rather, PURA § 35.004(c) demands that any costs associated with the interconnection be paid by the entity for which the transmission service is provided. If a reallocation is to occur, it must be done by the legislature and would require modification of existing law.

Question 5: Should a standard distribution resource interconnection allowance also apply in areas served by municipally owned utilities and electric cooperatives?

If the Commission were to determine that it could develop a standard distribution resource interconnection allowance that might apply in some situations, the law is clear that it could not apply to MOUs and Co-ops. With respect to governance of a MOU's distribution system, the Commission has limited jurisdiction as provided in PURA §§ 30.002 and 40.055, and Tex. Loc. Gov't Code § 552.001. PURA § 30.002 provides that "this subtitle [related to the regulation of "electric utilities"] does not authorize the commission to... [r]egulate or supervise a rate or service of a municipally owned utility." Tex. Loc. Gov't Code § 552.001, states that a "municipality may... operate a[n] [electric] utility system... and may regulate the system in a manner that protects the interests of the municipality." TPPA's comments address this issue in more detail and CPS Energy supports and joins in those comments.

Question 6: If a standard distribution resource interconnection allowance should apply in areas served by municipally owned utilities and electric cooperatives, does the Commission need to develop a wholesale cost recovery mechanism to address the costs associated with this allowance? What factors should the Commission consider in developing such a mechanism?

Because the Commission lacks authority to set a standard interconnection allowance in areas served by MOUs and Co-ops, CPS Energy believes this question is moot. Ultimately, this question should be addressed by the legislature if it chooses to provide for such an allowance.

Question 7: What disparities exist between distributed generation and energy storage resources interconnecting at transmission and distribution voltages?

Question 8: What, if any, action should the Commission take to address these disparities in a uniform fashion?

CPS Energy offers no comments in response to these two questions.

III. CONCLUSION

In conclusion, for the reasons noted here and in TPPA's comments, CPS Energy believes that the Commission lacks authority under existing law to implement the proposed standard distribution resource interconnection allowance, especially in regard to MOUs and Co-ops.

Respectfully submitted,

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PUC PROJECT NO. 54224

COST RECOVERY FOR SERVICE TO DISTRIBUTED ENERGY RESOURCES (DERS)	**§ § §**	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

EXECUTIVE SUMMARY TO CPS ENERGY'S RESPONSIVE COMMENTS IN PROJECT NO. 54224

The City of San Antonio, acting by and through the City Public Service Board (CPS Energy), provides the following executive summary to the foregoing comments in Project No. 54224.

Question 1: The Commission does not have authority to implement the proposed standard distribution resource interconnection allowance without explicit statutory language authorizing it. The Texas Supreme Court has been unequivocal about the Commission's authority, noting that "The PUC . . . has no inherent authority" and "has only those powers expressly conferred upon it by the Legislature."

Question 2: There are meaningful differences between distribution systems—which are essentially separate "islands" of individualized systems operating at multiple voltage levels to serve different customer classes—that make a standard allowance infeasible. The proposed standard interconnection allowance also is not permissible under PURA § 35.004(c), which requires the Commission to ensure that a utility recovers the utility's reasonable costs in providing wholesale transmission services **from the entity for which the transmission is provided** so that the utility's other customers do not bear the costs of the service. Thus, the law requires that the costs associated with providing wholesale transmission service be paid by the party receiving the services, and may not be shifted to other customers. An agency may not exercise a new power, or a power contradictory to the statute, on the theory that such a power is expedient for administrative purposes.

Question 3: Because the Commission lacks authority to set a standard interconnection allowance, this question is moot. Ultimately, this question should be addressed by the legislature if it chooses to provide for such an allowance.

Question 4: The Commission may not reallocate costs related to interconnection to a distribution system for the purpose of obtaining wholesale transmission service. Rather, PURA § 35.004(c) demands that any costs associated with the interconnection be paid by the entity for which the transmission service is provided. If a reallocation is to occur, it must be done by the legislature and would require modification of existing law.

Question 5: The Commission may not apply a standard distribution resource interconnection allowance to MOUs and Co-ops. With regard to an MOU's distribution system, the Commission has limited jurisdiction as provided in PURA §§ 30.002 and 40.055, and Tex. Loc. Gov't Code § 552.001.

Question 6: Because the Commission lacks authority to set a standard interconnection allowance in areas served by MOUs and Co-ops, this question is moot. Ultimately, this question should be addressed by the legislature if it chooses to provide for such an allowance.