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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 REPLY 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 reply 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. On September 27, 2024, numerous parties filed comments in response to Commission Staff's questions. Below, CPS Energy submits its reply comments to the filings made by other parties in this project.

I. INTRODUCTORY COMMENTS

At the outset, CPS Energy would note its general agreement with the comments filed by Texas Electric Cooperatives, Inc. (TEC) and Texas Public Power Association (TPPA). Further, CPS Energy agrees with the introductory comments filed by Oncor Electric Delivery Company LLC (Oncor) that "it is not appropriate to uplift distribution service provider("DSP")-incurred costs to ratepayers in order to serve DERs" and that because the "current framework is sensible and appropriately assigns costs on a cost-causative basis, no new rule or amendment to a current rule is needed."[1] Finally, CPS Energy also agrees with the comments filed by Texas Industrial Energy Consumers (TIEC) noting the significant differences between local distribution systems and the ERCOT transmission grid, as well as the significant legal impediments to adopting a standard distribution resource interconnection allowance and cost recovery mechanism for such.

[1] *See Oncor Electric Delivery Company LLC's Initial Response to the Questions for Comment Concerning DERS Interconnection Allowance* at 1. (Sep. 30, 2024).

II. REPLY COMMENTS TO COMMISSION STAFF'S QUESTIONS

Rather than respond to specific comments by any particular commenter, CPS Energy provides its reply comments in relation to the specific question being addressed, as set out below.

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

Some commenters argue that the Commission has authority to implement a standard distribution resource interconnection allowance under its purportedly "broad statutory authority" under PURA. This concept is inconsistent with the well-established law related to every agency in Texas—namely that agencies have only the power expressly granted to them by the legislature. The Texas Supreme Court has been unequivocal about this, 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."[2]

Further, principles of statutory construction weigh against the idea that the Commission's purportedly "broad" powers include the ability to implement a standard distribution resource interconnection allowance. The Texas legislature expressly revised PURA to give the Commission authority to implement an interconnection allowance in regard to wholesale transmission service at transmission voltage, but it did not extend such authority to transmission service at distribution voltage. The well-established statutory construction principle of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other)[3] indicates that because the legislature expressly provided an interconnection allowance for transmission service at transmission voltage, it was excluding the right to impose such an allowance for interconnection at distribution voltage.

There is good reason the legislature found it appropriate to provide for a standard allowance for interconnection at transmission voltage, but not at distribution voltage. Transmission facilities are essentially "socialized" facilities, paid for by transmission customers throughout the state. And there is an existing mechanism for socialized recovery of such costs—the TCOS postage stamp cost recovery

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

3 *See, e.g., CKB & Assocs., Inc. v. Moore McCormack Petroleum, Inc.*, 734 S.W.2d 653, 655 (Tex. 1987); also *Johnson v. Second Injury Fund*, 688 S.W.2d 107, 108-09 (Tex. 1985) ("The legal maxim *Expressio unius est exclusio alterius* is an accepted rule of statutory construction in this state" through which "the express mention or enumeration of one person, thing, consequence or class is equivalent to an express exclusion of all others.").

methodology. In contrast, distribution facilities have typically been paid for by local retail customers through local retail rates. They are not socialized assets paid for by customers throughout the state and there is no existing mechanism to allow for easy socialized recovery of costs from transmission customers throughout the state for the use of such local distribution facilities for transmission service. This is a meaningful distinction.

No commenters have cited a specific provision authorizing a standard distribution resource interconnection allowance because there is none. Given the legislature's express creation of such an allowance for interconnection at transmission voltage, and the lack of any inherent authority of the Commission, it is not legally permissible under existing law for the Commission to implement a standard distribution resource interconnection allowance. Further, TIEC's initial comments note the many additional legal impediments to practically implementing 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?

Hunt Energy Network (HEN) asserts that a standard allowance "encourages the developer to site the project within a reasonable distance from the interconnecting substation, minimizing the risk of additional infrastructure."[4] **CPS Energy believes a standard allowance does just the opposite:** it takes away incentives for developers to act efficiently to limit costs; rather, by shifting the costs to others, a standard allowance removes the natural economic incentive for developers to site their facilities in the most economically efficient manner possible. It basically gives them "free money" to play with when planning a project. As Oncor has noted in its initial comments, DESRs and DERs should bear costs associated with interconnections. This is the best way to ensure that they act in an economically efficient manner.

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?

In responding to this question, HEN argues that recurring monthly tariff charges imposed by utilities "have impacts that are detrimental to the long-term viability of projects," contending such tariff charges "are technologically discriminatory by only impacting distribution-connected energy storage resources while other interconnected technologies are not impacted."[5] This comment goes beyond the

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4 *See Hunt Energy Network LLC's Comments* at 3-4 (Sep. 30, 2024).

5 *See Hunt Energy Network LLC's Comments* at 5 (Sep. 30, 2024).

question and the scope of this proceeding. Moreover, existing law requires utilities to charge tariff rates in a non-discriminatory manner. Thus, HEN's contention is not only beyond the scope of this proceeding, but its allegation is contrary to existing law and there are remedies that already exist if an entity actually is being treated in a discriminatory manner contrary to a tariff's requirements.

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

In responding to this question, HEN asserts that "the utility should be paid for delivery charges, and paid only once," alleging "[i]t would not be fair to customers for the utility to be paid both for wholesale delivery and for retail delivery of the same energy."[6] This comment fails to recognize the underlying purpose of distribution facilities, which is to ensure the delivery of service to retail distribution customers. Thus, when a DESR uses those facilities twice—first by charging, then by dispatching power to the wholesale grid—it is placing multiple transmission burdens on the distribution system that is primarily designed to serve distribution customers. Thus, it is appropriate for the DESR to be required to pay for every usage of the distribution system—whether charging or discharging—and not just once for the delivery of wholesale service. The distinctly different purposes of the distribution system require differential treatment from the transmission grid—which is designed for a single purpose: the transmission of wholesale power at transmission voltage.

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

Commenters who have indicated that the Commission could develop a standard distribution resource interconnection allowance that applies to MOUs and Co-ops have wholly ignored both the Commission's limited jurisdiction as provided in PURA §§ 32.002, and 40.055, and Tex. Loc. Gov't Code § 552.001, as well as PURA § 35.004(c), which requires the Commission to ensure that MOUs and Co-ops "recover their 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." Put simply, the Commission does not have the same authority over MOUs and Co-ops as it does over IOUs and, as such, this makes a standard distribution resource interconnection allowance infeasible as to MOUs and Co-ops. And nothing provided by commenters has explained this away or overcome these statutory limitations on the Commission.

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[6] *See Hunt Energy Network LLC's Comments* at 5-6 (Sep. 30, 2024).

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?

Some commenters have indicated that the cost recovery mechanism for a standard distribution resource interconnection allowance could either be handled as a transmission cost of service paid for by all ERCOT transmission customers in the same manner as transmission service at transmission voltage, or simply passed along as a generation cost to all customers. Neither of these is a very practical solution for distribution utilities.

First, under no scenario should distribution customers be forced to pay for the costs associated with DERs or DESRs providing power to the transmission grid. This is blatant cost shifting, is wholly improper, and directly violates PURA § 35.004(c). As such, it is not legally permissible for the Commission to implement any cost recovery mechanism that would pass such costs along to distribution customers.

Second, requiring small distribution utilities to file TCOS cases to recover their costs would place an undue burden on them, as well as create significant new burdens on PUC Staff associated with processing all of the additional TCOS cases that would be necessary. As noted by TPPA in its initial comments, there are many smaller distribution-only utilities that do not currently have transmission rates and have no experience with the TCOS process. Creating a process where they would have to start using the TCOS process to recover their costs is neither administratively nor economically efficient. Further, the regulatory lag in recovering such costs could be disastrous to smaller distribution utilities, placing them in a challenging cash-flow position whereby they have to front potentially $1.5 million that they will not be able to recover until much later. For smaller distribution utilities this may be economically untenable.

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

In response to this question, New Leaf Energy, Inc. (New Leaf) takes issue with monthly rates for transmission service at distribution voltage charged by distribution utilities, contending that such charges (1) overstate system costs by failing to account for the time of day when DESR charging occurs, (2) neglects system benefits that DESRs provide to the distribution utility and ratepayers, and

(3) disadvantages DESRs compared to other resource types in ERCOT.[7] New Leaf also contends that charging limitations imposed by distribution systems unfairly ignore that DESRs typically charge off-peak and dispatch during peak times.[8] CPS Energy believes that each of these arguments are unfounded.

In its experience, CPS Energy has found that DESRs on its system often charge during peak demand times, despite arguments to the contrary. In fact, in a prior docket CPS Energy presented evidence demonstrating precisely this fact, with ERCOT data showing that DESRs regularly charged at all times of day, including during periods of peak demand.[9] As noted in the testimony in that docket:

> "the ERCOT data demonstrates that [the DESR's] facilities charge at all hours of the day, and that some of [the DESR's] heaviest charging times occurred during times at or near peak demand in January, July, and August."[10]

While New Leaf may not operate this way, other DESRs do. Thus, DESRs place a meaningful strain on distribution system resources and the distribution utility's ability to meet the demand on its system. Consistent with this fact, CPS Energy has not experienced the "considerable" system benefits that supposedly accrue to it from DESRs dispatching during peak hours. Rather, in CPS Energy's experience, the benefits accrue principally to the larger ERCOT transmission grid and the economic gain of the DESR, and not to the local distribution system.

The DERs and DESRs that are the focus of this project are designed to provide benefits to the ERCOT transmission grid and not to any local distribution systems. New Leaf's view of the benefits are only realistic with a massive overhaul of the wholesale market to include an additional focus on distribution systems and distribution system details that would enable DERs and DESRs to provide distribution system benefits. Currently, the wholesale market does not consider the distribution system outside of the power flows experienced at the substations (typically loads), which leads to a misalignment between the economic incentives for transmission and the needs of the distribution system. Thus, the local system usually just bears the burden of ensuring that its distribution facilities are sufficient to meet the DESRs' needs along with its own retail customers, receiving little or no benefit from DERs and DESRs interconnected to the distribution system.

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7 *See New Leaf Energy, Inc.'s Initial Comments on Commission Staff's Questions* at 4-5 (Sep. 30, 2024).

8 *See New Leaf Energy, Inc.'s Initial Comments on Commission Staff's Questions* at 6 (Sep. 30, 2024).

9 *See* Rebuttal Testimony of Charles Hoopingarner at p. 4, lines 12, through p. 6, line 11, and attached Exhibit CH-R-1 (Interchange Filing No. 119), PUC Docket No. 51409, *Application of the City of San Antonio, Acting by and through the City Public Service Board, to Amend its Wholesale Transmission Customer Primary Distribution Voltage Service Tariff.*

10 *See* Rebuttal Testimony of Charles Hoopingarner at p. 6, lines 2-4, and attached Exhibit CH-R-1 (Interchange Filing No. 119), PUC Docket No. 51409, *Application of the City of San Antonio, Acting by and through the City Public Service Board, to Amend its Wholesale Transmission Customer Primary Distribution Voltage Service Tariff.*

As for the disadvantages associated with monthly charges, this is certainly true because, as noted above, the DESR is using facilities paid for by the local ratepayers and not statewide transmission customers. Accordingly, the DESR is being required to pay its fair share of the use of a local system, whereas facilities connected at transmission voltage to ERCOT transmission facilities get the benefit of such costs being socialized statewide. Until the legislature decides to socialize the cost of distribution assets to customers throughout the state, this disparity will always exist.

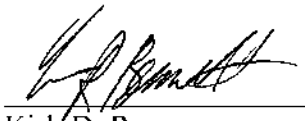
Question 8: What, if any, action should the Commission take to address these disparities in a uniform fashion?

Some commenters argue that the Commission should define a standardized interconnection procedure, timeline, and allowance to improve predictability for developers. This approach ignores the significant legal difference in the Commission's authority over MOUs and Co-ops versus IOUs. MOUs and Co-ops generally have a right to control their systems in ways that IOUS are otherwise subject to the Commission's jurisdiction. Thus, there are natural statutory limits on the Commission's ability to "streamline" the process across all different types of distribution utilities, thus making it difficult to truly standardize the process in a similar manner for IOUs and MOUs and Co-ops.

III. CONCLUSION

In conclusion, for the reasons noted here and in TPPA and others' 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, and that there is no reason to change the current system for distribution resource interconnections.

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 REPLY 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 PUC is a creature of the legislature and has no inherent authority, but has only those powers expressly conferred upon it by the Legislature. The Texas legislature expressly revised PURA to give the Commission authority to implement an interconnection allowance in regard to wholesale transmission service at transmission voltage, but it did not extend such authority to transmission service at distribution voltage. The statutory construction principle of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other) indicates that because the legislature expressly provided an interconnection allowance for transmission service at transmission voltage, it was excluding the right to impose such an allowance for interconnection at distribution voltage.

Question 2: A standard allowance takes away incentives for developers to act efficiently to limit costs; by shifting the costs to others, a standard allowance removes the natural economic incentive for developers to site their facilities in the most economically efficient manner possible. DESRs and DERs should bear costs associated with interconnections, because this is the best way to ensure that they act in an economically efficient manner.

Question 3: Recurring monthly tariff charges are beyond the question and the scope of this proceeding. Existing law requires utilities to charge tariff rates in a non-discriminatory manner and there are remedies that already exist if an entity actually is being treated in a discriminatory manner contrary to a tariff's requirements.

Question 4: When a DESR uses distribution facilities twice—first by charging, then by dispatching power to the wholesale grid—it is placing multiple transmission burdens on the distribution system that is primarily designed to serve distribution customers. Thus, it is appropriate for the DESR to be required to pay for every usage of the distribution system—whether charging or discharging—and not just once for the delivery of wholesale service.

Question 5: The Commission does not have the same authority over MOUs and Co-ops as it does over IOUs and, as such, this makes a standard distribution resource interconnection allowance infeasible as to MOUs and Co-ops. And nothing provided by commenters has explained this away or overcome these statutory limitations on the Commission

Question 6: Under no scenario should distribution customers be forced to pay for the costs associated with DERs or DESRs providing power to the transmission grid. This is blatant cost shifting, is wholly improper, and directly violates PURA § 35.004(c). Also, requiring small distribution utilities to file TCOS cases to recover their costs would place an undue burden on them, as well as create significant new burdens on PUC Staff associated with processing all of the additional TCOS cases that would be

necessary. Further, the regulatory lag in recovering such costs could be disastrous to smaller distribution utilities, placing them in a challenging cash-flow position whereby they have to front potentially $1.5 million that they will not be able to recover until much later.

Question 7: CPS Energy has found that DESRs on its system often charge during peak demand times, despite arguments to the contrary. ERCOT data shows that DESRs regularly charged at all times of day, including during periods of peak demand. DESRs do not provide a meaningful benefit to distribution systems.

Question 8: A standardized interconnection procedure, timeline, and allowance is not feasible given the significant legal difference in the Commission's authority over MOUs and Co-ops versus IOUs.