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PUC PROJECT NO. 54233

TECHNICAL REQUIREMENTS AND INTERCONNECTION PROCESSES FOR DISTRIBUTED ENERGY RESOURCES (DERS)	**§**	**PUBLIC UTILITY COMMISSION OF TEXAS**

CPS ENERGY'S INITIAL RESPONSIVE COMMENTS IN PROJECT NO. 54233

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

The City of San Antonio, acting by and through the City Public Service Board (CPS Energy),[1] submits these comments and executive summary to the Public Utility Commission of Texas (Commission) in Project No. 54233. On November 22, 2022, Commission Staff made a filing in this project requesting comments from market participants and other interested persons on two draft rules (referred to herein as "Draft Rule 25.211" and "Draft Rule 25.212") that would replace existing rules, and on one identified question. This filing addresses those matters.

At the outset, CPS Energy would note that the two draft rules far exceed the scope and breadth of the existing rules, in ways that are not consistent with the Public Utility Regulatory Act (PURA) or other statutes. One particularly notable change is that the new draft rules would apply to municipally-owned utilities (MOUs), which the current rules do not. This is significant because the Commission has different authority over MOUs than it does over other types of utilities. The proposed changes to the rules in question—especially those related to cost recovery and facility requirements—are contrary to clear statutory law related to MOUs, including PURA and the Texas Local Government Code. As such, the draft rule language would attempt to extend the Commission's authority over MOUs beyond the bounds established by the Texas legislature.[2] To

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[1] CPS Energy is a member of the Texas Public Power Association (TPPA) and understands TPPA will also be filing comments regarding the proposed rules. CPS Energy supports the TPPA comments and concerns addressed in those comments.

[2] It is also worth noting that the new draft rules also would apply to electric cooperatives in a manner well beyond the scope of the existing rules. The existing rules apply only in a very limited fashion to electric cooperatives. Yet, the new draft rules would apply to electric cooperatives in their entirety. Ironically, the draft rules seem to not fully comprehend their own scope because in parts they use phrases such as "if a DSP or electric cooperative . . . ," which is nonsensical, as the term "DSP" includes an electric cooperative under the Commission's rules. It appears that Staff has taken the existing rules and substituted DSPs in place of electric utilities and modified the rules to fit DERs broadly. Such has resulted in the nonsensical application at times of two sets of requirements for DSPs and electric cooperatives, even though electric cooperatives are DSPs under the Commission's rules. The existing rules 25.211 and 25.212 correctly distinguish electric utilities and electric cooperatives, because electric cooperatives are

comply with existing Texas statutes regarding MOUs, Draft Rule 25.211 and Draft Rule 25.212 must be revised to either exclude MOUs from their application or the rules must be significantly altered to comply with the explicit statutory governance scheme established for MOUs over distribution systems they own.

For the primary jurisdictional reason discussed above and in greater detail below, and for all of the additional substantive reasons addressed in these comments, Draft Rule 25.211 and Draft Rule 25.212 should either explicitly be revised to exempt MOUs from their application, or be rejected entirely at this time.

I. INTRODUCTION

CPS Energy appreciates the Commission attempting to tackle issues related to the proliferation of DERs in Texas. There are, however, a number of factors that complicate the Commission's consideration of such issues, particularly with respect to MOUs.

As CPS Energy has noted in other dockets,[3] the Commission's authority over investor-owned utilities (IOUs) is meaningfully different from its statutory authority over MOUs. While the Commission has broad jurisdiction over the rates, cost recovery, and terms of service under which IOUs provide service as distribution service providers (DSPs), the legislature has given municipalities broad regulatory authority over their owned DSPs. Accordingly, when crafting rules to address DERs, the Commission will have to consider and apply a different regulatory regime for MOUs than it does for IOUs, or will have to limit its rules in accordance with the more limited authority the Commission has over MOUs. Any rules promulgated by the Commission related to DERs must recognize and provide for the protection of municipal control over their own distribution systems.

These comments address the issues of greatest importance with the draft rules. If a particular provision is not specifically addressed, CPS Energy's silence on that issue should not be considered acceptance or agreement. CPS Energy will additionally address the proposed rules in reply comments pursuant to the schedule presented by Commission Staff.

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not electric utilities under PURA or the Commission's rules. But, by modifying the rules to apply to DSPs rather than electric utilities, yet retaining existing language regarding electric cooperatives, Staff has created nonsensical and contradictory provisions in the rules regarding electric cooperatives.

[3] *See* Docket No. 51409 and Project Nos. 54224 and 51603. Especially Interchange filings #41 in Docket No. 51409, #20 in Project No. 54224, and #37 in Project No. 51603. Those filings are incorporated by reference as if fully set forth herein.

II. DISCUSSION

In its filing of November 22, 2022, Commission Staff identified two proposed draft rules and a question on which it was seeking comments from market participants and other interested persons. CPS Energy's responsive comments on those items are set out below.

A. Draft Rule 25.211

1. General Issues

The Commission seeks comments on the potential repeal of existing 16 TAC § 25.211 and replacement with an entirely new rule, Draft Rule 25.211. CPS Energy asserts that such an action is inappropriate and Draft Rule 25.211 is fraught with problems.

The existing Rule 25.211, which was initially promulgated in 1999, in response to and in accordance with the market restructuring provisions of Senate Bill No. 7 (SB 7), applies only to "electric utilities" and was adopted for the limited purpose of "stating the terms and conditions that govern the interconnection and parallel operation of both on-site distributed generation in order to implement Public Utility Regulatory Act (PURA) §39.101(b)(3) and a natural gas distributed generation facility in order to implement PURA §35.036." Thus, by limiting the application of the rule to "electric utilities," over which the Commission has full distribution voltage regulatory authority, the existing rule fully complies with the market restructuring of SB 7 and does not purport to govern MOUs like CPS Energy. The exclusion of MOUs from a rule directly regulating distribution voltage service is fully aligned with the Commission's limited ratemaking authority under PURA over MOUs, and the provisions of PURA that impose requirements on MOUs related to their recovery of the costs of their provision of service. The proposed Draft Rule 25.211 does not comply with PURA, at least in regard to MOUs.

Staff's Draft Rule 25.211 would apply to "distribution service providers (DSPs), distribution resource providers, and distribution resources interconnected or seeking interconnection with a DSP's distribution system in the state of Texas." Thus, by expanding beyond electric utilities, Draft Rule 25.211 would capture MOUs, which are within the category of "DSPs." The Commission's permissible jurisdictional authority under PURA over electric utilities is not permissible authority over MOUs, which are explicitly excluded from the definition of "electric utility."[4]

[4] *See* 16 TAC § 25.5(42)(A).

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." Similarly, in relation to a MOU that decides to opt into customer choice, PURA § 40.055 affirmatively reserves a MOU's authority to set all terms of access, conditions, and rates applicable to services provided by the MOU, including nondiscriminatory and comparable rates ***for distribution***.

Further, PURA § 40.004, explicitly states the Commission's limited authority over MOUs. That statutory provision, entitled "Jurisdiction of Commission," states in relevant part:

> Except as specifically otherwise provided in this chapter [related to competition of MOUs and river authorities], the commission has jurisdiction over municipally owned utilities only for the following purposes:
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> (1) to regulate wholesale transmission rates and service, including terms of access, to the extent provided by Subchapter A, Chapter 35;
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> (2) to regulate certification of retail service areas to the extent provided by Chapter 37;
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> (3) to regulate rates on appeal under Subchapters D and E, Chapter 33, subject to Section 40.051(c);
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> (4) to establish a code of conduct as provided by Section 39.157(e) applicable to anticompetitive activities and to affiliate activities limited to structurally unbundled affiliates of municipally owned utilities, subject to Section 40.054;
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> (5) to establish terms and conditions for open access to transmission and distribution facilities for municipally owned utilities providing customer choice, as provided by Section 39.203;
>
> (6) to administer the renewable energy credits program under Section 39.904(b) and the natural gas energy credits program under Section 39.9044(b);
>
> (7) to require reports of municipally owned utility operations only to the extent necessary to:
>
> (A) enable the commission to determine the aggregate load and energy requirements of the state and the resources available to serve that load; or

(B) enable the commission to determine information relating to market power as provided by Section 39.155; and

(8) to evaluate and monitor the cybersecurity preparedness of a municipally owned utility described by Section 39.1516(a)(3) or (4).[5]

The Commission's authority over rates of a MOU are limited to appeals under PURA Chapter 33 and to "wholesale transmission rates and service, including terms of access, to the extent provided by Subchapter A, Chapter 35."[6] Thus, while Chapter 36 of PURA generally governs the Commission's authority over electric utility rates, Chapter 35 carefully outlines the Commission's limited authority over MOUs.

PURA § 35.004 requires an electric utility or transmission and distribution utility that owns or operates transmission facilities to "provide wholesale transmission service at rates and terms, including terms of access, that are comparable to the rates and terms of the utility's own use of its system" and requires the Commission to "ensure that an electric utility or transmission and distribution utility provides *nondiscriminatory access* to wholesale transmission service for qualifying facilities, exempt wholesale generators, power marketers, power generation companies, retail electric providers, and other electric utilities or transmission and distribution utilities."[7]

Further, PURA §35.004(c) recognizes a general mandate of PURA regarding the provision of utility service: namely, the customers of a MOU should not subsidize the service provided by the MOU to another customer. Specifically, PURA § 35.004(c) states:

> When an electric utility, electric cooperative, or transmission and distribution utility 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).

This principle is particularly relevant here, where Draft Rule 25.211(d)(1) would explicitly prevent MOUs from recovering the actual costs of providing distribution service, in direct violation of PURA § 35.004(c), and would force MOUs to wheel power across their distribution systems to the transmission grid without compensation. This would be an unconstitutional gift and

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5 Tex. Util. Code § 40.004. (Emphasis added).

6 Tex. Util. Code $ 40.004(1).

7 Tex. Util. Code § 35.004(a)-(b). (Emphasis added).

an illegal taking of property. While the Commission does not have general ratemaking authority over MOUs, it does have the responsibility of ensuring that wholesale transmission service is provided "at rates and terms, including terms of access, that are comparable to the rates and terms of the utility's own use of its system" and ensuring "that an electric utility or transmission and distribution utility provides *nondiscriminatory access* to wholesale transmission service for qualifying facilities, exempt wholesale generators, power marketers, power generation companies, retail electric providers, and other electric utilities or transmission and distribution utilities."[8] The Commission is also required to "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."[9] Any rule that undermines these requirements is improper and unlawful.

Chapter 35 of PURA requires that a MOU's costs associated with providing wholesale transmission service to DERs must be collected from the party receiving the services. When wholesale transmission service is provided at distribution voltage over a MOU's facilities, the distribution system facilities are being utilized and the entity receiving the wholesale transmission service must pay for the use of the distribution system. Just like a car incurs wear and tear when used, distribution system facilities incur similar burdens when they are used and, under PURA § 35.004(c), no party is entitled to a "free ride" on the use of a MOU's distribution facilities. The provisions of Draft Rule 25.211(d)(1), which prohibit DSPs for collecting the costs associated with the use of their system, is in violation of PURA as applied to MOUs.

2. Specific Concerns.

In addition to the general issues discussed above, CPS Energy raises the following additional concerns regarding specific language within Draft Rule 25.211.

a. Draft Rule 25.211(d)(1)(A)

The proposed language of Draft Rule 25.211(d)(1)(A) prohibits the DSP from assessing charges "for the export of energy by the distribution resource to the DSP's distribution system." This language should be clarified to apply only to energy purchased by the DSP, so as to ensure the rule is not interpreted as allowing a DER to provide energy to a DSP's retail customer. Thus,

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8 Tex. Util. Code § 35.004(a)-(b). (Emphasis added).

9 Tex. Util. Code § 35.004(c).

the language should be revised to prohibit the assessment of charges "for the export of energy by the distribution resource that is purchased by the DSP."

b. Draft Rule 25.211(d)(2)(A)

The proposed language of Draft Rule 25.211(d)(2)(A) limits the situations in which a MOU may disconnect service to a DER that is connected to and using the MOU's distribution facilities. The language limits the MOU's ability to disconnect the DER in situations necessary for the stability of the MOU's distribution system or to ensure the provision of service to the MOU's other retail customers, for which the MOU has a primary obligation. This language impedes on the MOU's authority over its own system in a manner not allowed by PURA's grant to the Commission of limited authority over MOUs. A MOU must have authority to disconnect in situations where it is necessary to ensure stability of its system or to ensure it can properly provide service to its other distribution system customers that may have priority. The proposed language would take away that authority from MOUs in a manner not allowed by law.

c. Draft Rule 25.211(d)(2)(B)

The proposed language of Draft Rule 25.211(d)(2)(B) attempts to establish metering requirements related to interconnected DERs, specifically allowing the DER to decide whether the DSP or another entity will provide the meter. This directly conflicts with Tex. Loc. Gov't Code §552.001(d), which provides in relevant part that a "municipality that owns or operates a[n] [electric] utility system may prescribe the kind of … electric appliances that may be used inside or outside the municipality. The municipality may inspect those facilities and appliances, require that they be kept in good condition at all times, and prescribe the necessary rules, which may include penalties, concerning them." The Commission may not, by rule, remove authority granted to a MOU by statute. Yet this rule would purport to do just that, taking away a MOU's authority over its own necessary facilities and appliances needed for the provision of distribution voltage service by a MOU.

B. Draft Rule 25.212

As with Draft Rule 25.211, this draft rule fails to properly distinguish between the law applicable to MOUs and the law that regulates other types of electricity providers. In failing to make this distinction, Draft Rule 25.212 may conflict with statutory law.

Before turning to any specific provision of Draft Rule 25.212, it is important to make a clarifying comment. Draft Rule 25.212(a) states that "[t]his section prescribes the *minimum* technical and operational requirements that must be maintained on an ongoing basis for all distribution resources in Texas interconnected with a DSP's distribution system that are operating at 60 hertz (Hz) in parallel with a DSP's distribution system."[10] To the extent that this language means exactly what it states—namely that the Commission is only establishing minimum requirements and MOUs may impose additional requirements—then CPS Energy supports this specific provision in Draft Rule 25.212(a) and reserves its right as a MOU with control over its own distribution system to impose additional requirements. However, if Draft Rule 25.212 is intended to establish requirements that preclude a MOU from imposing additional requirements, then such is improper and unlawfully intrudes on a MOU's ability to regulate its own electric utility system. As previously stated, Tex. Loc. Gov't Code provides that a "municipality may … operate a[n] [electric] utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interests of the municipality." Accordingly, a provision that limits the MOU's ability to do this would be in conflict with this statutory authority clearly granted to MOUs.

Although most of Draft Rule 25.212 imposes requirements on DERs seeking to interconnect to a DSP's system, Draft Rule 25.212(f)(2)(C) could be construed as imposing a requirement that DERs of all sizes (under 10 MW) must be allowed to interconnect to a DSP's system, which could conflict with a MOU's authority to control its distribution system. This proposed rule establishes the requirements for protective devices of distribution resource for certain generators, and inverter systems, and sets the requirements by size, with the smallest being a "seasonal net maximum sustained rating of 10 kW or less." This implies that the Commission intends for small distributed energy resources (such as batteries and rooftop solar resources that may be aggregated) to large energy storage resources (such as large batteries) be allowed to wheel energy across a MOU's distribution system under similar terms, except as to the specific devices enumerated in this rule. However, varying types of resources may have different impacts upon a local distribution system and the MOU must have the ultimate ability to control its own system. As noted above, Tex. Loc. Gov't Code § 552.001(b) grants a municipality control over its own distribution system. Any provision that intrudes on that right of the MOU violates the statute and

[10] Emphasis added.

would be unlawful. Again, the Commission may not adopt rules that conflict with a statutory right granted to a MOU. Such rules would be facially invalid.

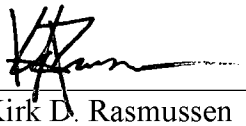
C. <u>Question:</u> Should technical and operational requirements in draft § 25.212, like frequency and voltage ride-through requirements, for distribution resources interconnected in the ERCOT region, reside in the Electric Reliability Council of Texas (ERCOT) Protocols or Commission substantive rules? If such requirements should reside in the ERCOT Protocols, given that the technical and operational requirements would still be necessary in commission substantive rules for non-ERCOT power regions, what would be the benefit of moving the requirements to the ERCOT Protocols?

In regard to MOUs, CPS Energy contends that the technical and operational requirements for interconnection of DERs should be left to the parties to negotiate relative to the specific circumstances of the local distribution system, and may be contained in the interconnection agreement or the MOU's operating procedures and applicable standards. Aside from that, CPS Energy generally takes the position that there should be a requirement in the PUC rules that DERs must meet the frequency and voltage ride-through requirements as prescribed in the ERCOT protocols. Thus, the actual requirements should be in the protocols to allow greater flexibility for modification, but the PUC rules should make it clear that DERs are required to comply with such ERCOT protocols.

III. CONCLUSION

In conclusion, CPS Energy recommends that Draft Rule 25.211 and Draft Rule 25.212 should either explicitly be revised to exempt MOUs from their application, or be rejected entirely at this time. CPS Energy looks forward to constructively participating in this project in an effort to assist the Commission in implementing any appropriate necessary changes to its rules.

Respectfully submitted,



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PUC PROJECT NO. 54233

TECHNICAL REQUIREMENTS AND INTERCONNECTION PROCESSES FOR DISTRIBUTED ENERGY RESOURCES (DERS)	**§**	**PUBLIC UTILITY COMMISSION OF TEXAS**

EXECUTIVE SUMMARY TO CPS ENERGY'S INITIAL COMMENTS IN PROJECT NO. 54233

The City of San Antonio, acting by and through the City Public Service Board (CPS Energy), provides the following executive summary to its initial comments in Project No. 54233.

- **Draft Rule 25.211**: CPS Energy contends that this draft rule would violate PURA if it is applied to MOUs. Therefore, MOUs should be exempted from it or it should not be adopted.

- **Draft Rule 25.212**: CPS Energy contends that this draft rule would violate PURA if it is applied to MOUs. Therefore, MOUs should be exempted from it or it should not be adopted.

- **Staff Question**: In regard to MOUs, CPS Energy contends that the technical and operational requirements for interconnection of DERs should be left to the parties to negotiate relative to the specific circumstances of the local distribution system, and may be contained in the interconnection agreement or the MOU's operating procedures and applicable standards. Aside from that, there should be a requirement in the PUC rules that DERs must meet the frequency and voltage ride-through requirements as prescribed in the ERCOT protocols.