



## **Filing Receipt**

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October 13, 2023

David Gordon, Executive Counsel  
David Smeltzer, Division Director, Rules and Projects  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
PO Box 13326  
Austin, TX 78711-3326

**Re: Project No. 54999 – Texas Energy Fund**

Dear Mr. Gordon and Mr. Smeltzer:

Competitive Power Ventures, Inc. ("CPV") is a developer, owner, and operator of power generation projects. Over the last two decades CPV has developed and commercialized over 15,000 MW of power generation across North America, primarily dispatchable natural gas projects, but also including wind and solar generation. Between 2016 and 2022, we have developed and brought to market five new state-of-the-art natural gas-fired combined cycle plants – among the most efficient power plants in the country. This year we completed our sixth, the \$1.3 billion, 1,258 MW CPV Three Rivers project in Illinois, which has entered into commercial operation after a three-year construction effort. This is a development track record unmatched in the United States.

CPV is focused on applying its development, financial and project management expertise to advance the next generation of technologies, including dispatchable power projects that will utilize carbon capture technology. We also have an extensive renewable development effort with three utility scale solar projects currently under construction.

CPV has been developing a project in Texas for over four years and has carefully monitored the regulatory and legislative initiatives that would impact our investment decision. We saw the opportunity and need for cutting-edge dispatchable energy resources in Texas over four years ago and began acting on it. The significant investments that we make are private investments based upon detailed market, regulatory, financial, and technical analysis.

CPV endorses the legislature's prioritization of new dispatchable energy resources to improve the reliability of Texas' electric grid and appreciates their work in crafting legislation to create the Texas Energy Fund. We recently announced a project in West Virginia – a \$3 billion-dollar 2,060 MW natural gas-fired combined cycle project with an integrated carbon capture facility. That project is expected to create up to 2,000 skilled jobs at its construction peak and about 150 direct and indirect full-time jobs after construction. We would like to move forward with a

similar project here in Texas and a thoughtfully crafted Texas Energy Fund program will ensure the development, construction, and operation of new reliable power generation for the State of Texas.

After reviewing the questions shared by the Public Utility Commission of Texas (PUCT), CPV has the following ideas and recommendations as the Texas Energy Fund is implemented.

## **Loans for Facilities Inside the ERCOT Power Region**

### **Essential Components of a Rule to Implement the Loan Program**

#### **i. Evaluating Creditworthiness**

Creditworthiness should consider two periods – the construction period and the operations period. For construction, the applicant should be required to provide proof of capital and/or capital commitments sufficient to complete the project's development and construction and support its ongoing operations. That proof may be comprised individually or through a combination of guarantees, letters of credit, lender commitments, and equity investor commitments.

If on balance sheet, availability under the Texas Energy Fund Loan should be conditioned upon the applicant either (i) meeting investment-grade credit criteria or (ii) providing credit support in an amount sufficient to complete the project (other than the Texas Energy Fund Loan commitment) as well as collateral support to meet the project's commercial contract obligations, and the credit of the issuer in each case should have an investment grade rating from at least two of Moody's, S&P, and Fitch rating services. There should be an ongoing covenant regarding maintenance of the investment grade rating for the credit support behind the obligation to complete the funding of the project.

If non-recourse project financing, availability of funds under the Texas Energy Fund program should be conditioned upon coincident availability of commitments required to fund/finance the costs in excess of the Texas Energy Fund loan commitment. Those commitments may be comprised of (i) equity commitments from the project's sponsors (letters of credit, guarantees, etc.) and (ii) pari-passu senior ancillary credit facilities such as letters of credit to support project commercial contract and financing obligations as well as a working capital revolving credit facility to support operations. The equity support obligations should carry the same credit quality requirement as those associated with a balance sheet sponsor financing.

For operations, a project's economic profile should project an ability for the project to repay the Texas Energy Fund loan over its 20-year term post commercial operations. In the case of power generation facilities, in addition to reliance of sales into the ERCOT wholesale power markets, projects are likely to enter into various commercial arrangements with a range of counterparties for both project inputs (natural gas, service agreements, operations) as well as offtake agreements (sales of energy and other products) under a myriad of terms which all should be taken into account.



## **ii. Determining “Estimated Cost” of Projects**

“Estimated cost” should include all costs generally associated with the development, construction, and any additional capital commitments required for the project to reach completion including but not limited to permitting, arm’s length consulting contracts, development fees, land acquisition and lease costs, commercialization including all commodity arrangements, financing including closing costs, legal fees, upfront fees, commitment fees, interest rate protection, ancillary credit facilities fees, title insurance, construction including a reasonable contingency, all interconnections and insurance, and O&M mobilization, first fire, testing including fixed and variable costs, and optimization.

Applicants in development must also assume that the Environmental Protection Agency’s (EPA) proposed 111D regulations will take effect as currently written. This is the “price of power” to meet proposed EPA regs.

## **iii. Addressing Regional and Reliability Needs**

All dispatchable energy projects should be evaluated as to how they serve the grid. The PUCT should prioritize projects that provide a broad variety of grid related services including full dispatchability, a wide operating range that allows for the ability to provide all types of reserves, grid support for regulation service as well as system stability through VAR capability. A significant consideration should be the expected cost of energy delivered and a projects impact of that energy in the markets.

Reliable baseload power that is also able to respond to fluctuations in grid demand should be the preferred resource. This addresses multiple policy concerns. New highly efficient baseload generation not only increases supply and lowers energy cost overall, but given it is likely to run during most hours of the year, they do not face the same challenges as other units, which may face start-up issues during extreme cold periods or short notice fuel procurement.

The location of the applicant plant should be a factor that the PUCT considers for the loan program. In passing HB 5066 this spring, the legislature noted that they expect a “rapid electrical load growth” and called on ERCOT to accelerate transmission studies in the region. A program that considers regional demand will better address the energy needs of ERCOT while optimizing impacts on the transmission system.

## **iv. Reliability Performance Standard Metric Timing**

It is important for the PUCT to adopt reliability performance standards (as described in PURA § 34.0106(c)) as part of the loan rule. Establishing the performance requirements will make the application and evaluation process under the program more efficient as it should help limit the applicant pool to only those who are able to meet the requirement thus speeding the overall evaluation process and minimizing the Energy Fund resource requirements in administering the program to only qualified applicants. At a minimum, the PUCT should adopt the reliability

performance standards soon after the loan rule is finalized to provide as much time as possible for applicants.

### **Timing and Loan Rule Impacts**

#### **i. Timing Challenges in General**

*CPV recommends that the PUCT adopt loan program rules no later than March 2024.*

A project's partnering, commercial, and legal arrangements are most often informed by the projected financing regime under which it will be constructed and operated. Adopting Loan Program implementation rules by March 2024 will significantly avoid issues and ensure that projects will advance on pace to be able to meet the year-end 2025 first funding requirement under the legislation. This is the case even for projects that are relatively advanced today.

Assuming that many of the requirements of traditional financing will be applicable to this Loan Program, we would expect the traditional project financing track timeline to require an up to one-year effort. The goal of developing and publishing the Loan Program participation rules is to help facilitate the ability to meet the first draw requirement by year-end 2025. For those sufficiently advanced, a key challenge is certainty of the Loan Program requirements and therefore execution.

#### **ii. Timing Challenge for Additional Project Loans**

As noted previously, the non-Loan program funded capital should be committed (cash, letter of credit, guaranty) as conditions precedent to the availability of funding under the Loan program. Once both the Loan program and non-Loan program capital is fully committed (including all required ancillary credit facilities), the 3% deposit made, and all other conditions precedent under the loan terms are met, the actual order of funded draws (i.e., Loan program funded capital first followed by committed equity funding) would be at the applicant's discretion and generally dictated by its relative cost of the capital.

## **Completion Bonus Grants**

### **Essential Components**

#### **i. Reliability Metrics and Facility Types**

A combination of the expected capacity factor of the projects and the forced outage rate would be an appropriate metric that the PUCT can utilize to evaluate the reliability contribution of specific generators. The latest technology of highly efficient, low emitting and low heat rate dispatchable projects should have the lowest forced outage rate while providing a significant amount of on-line energy to the power system.

The goal of the program is to have more dispatchable and reliable resources in the State of Texas. For that reason, the program should not differentiate between facility types, but easily



comparable performance criteria. Ultimately, being able to provide sufficient reliable energy that is online as quickly as possible is the purpose of the bonus grants.

## **ii. Defining Extenuating Circumstances**

As we have seen over the last three plus years, supply chains and labor can be significantly disrupted, sometimes with no warning and for extended periods of time. The PUCT should define “extenuating circumstances” as anything that would be covered by industry standard force majeure language, as well as additional factors like permitting delays, as long as an applicant is proceeding in the most diligent manner that would mitigate any such force majeure condition.

## **Necessary Program Functionality**

### **i. Timing and Eligibility**

CPV recommends that completion bonuses be limited to new facilities and available whether the projects are part of the loan program. This would provide complementary incentive for more new generation to enter the state, furthering the use of the funds set aside; however, these funds should be limited to new projects that meet the criteria necessary to qualify for the loan program.

For application timing, the Act makes it clear that a facility is eligible to receive a bonus grant when it is interconnected to the grid; however, facilities should be able to apply upon entering into a facility impact study (FIS).

## **Additional Items of Importance**

### **Use and Timing of Loan Funds**

Given the need to get projects built as soon as possible, and that the loan program selection process should not delay the development and construction of new dispatchable power generation facilities, CPV recommends that the PUCT make the loan funds eligible for either construction and term financing, or just as a term loan facility, allowing for new projects to arrange private construction financing with the expectation and commitment of the Energy Loan Program to “construction take-out financing.” Incorporating this flexibility could avoid an applicant delaying breaking ground as the loan program unfolds and would help to accelerate getting new steel in the ground. The legislature did not take a clear stance on this use, but it would help bring online new projects under development.

### **Compliance with Proposed Environmental Protection Agency (EPA) Regulations**

We also note that a combined-cycle gas turbine (CCGT) power generation facility will be proposed whereby it is developed and jointly owned/operated with an associated new carbon capture sequestration (“CCS”) or underground storage (“CCUS”) facility to ensure the new CCGT is positioned to meet the proposed EPA regulations that, as written, are scheduled to require

compliance by 2035. A new stand-alone CCGT facility would be EPA non-compliant in 2035, potentially resulting in the inability to operate the project beyond that date.

Under this project configuration, financing of the project occurs at the holding company level which owns both the CCGT and CCS projects. As such, we recommend that the Texas Energy Fund Loan is available to the holding company applicant up to an amount equal to 60% of the combined estimated cost of the two facilities. If the Loan amount is limited to 60% of the estimated cost of the CCGT facility, the sponsor would need to arrange non-Texas Energy Fund funded senior debt commitments and such debt (and all ancillary credit facilities) will need to be pari-passu with the Texas Energy Fund Loan. The sizing of the debt will still be subject to the recommended DSCR-based sizing metrics and the 60% leverage cap. In the alternative, a Texas Energy Fund Loan to a single stand-alone facility without carbon capture may face an early end-of-life for the project if the proposed EPA regulations are enacted.

We appreciate your consideration of our comments and recommendations and look forward to working with the PUCT as the regulatory process continues. Please do not hesitate to contact me with any questions or for any additional information.

Sincerely,



Thomas J. Rumsey  
SVP – Sustainability & External Affairs