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SIERRA CLUB
LONE STAR CHAPTER

PROJECT NO. 55826		
TEXAS ENERGY FUND IN-ERCOT	§	PUBLIC UTILITY
GENERATION LOAN PROGRAM	§	COMMISSION
PROGRAM	§	OF TEXAS

January 5th, 2024

COMMENTS OF SIERRA CLUB ON PROPOSAL FOR PUBLICATION OF NEW 16 TAC §25.510 (Project No 55826)

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As an organization, Sierra Club did not support SB 2627 and actively opposed the constitutional amendment (Proposition 7) that created both the loan and energy fund completion bonus. We believed that it was inappropriate to use taxpayer funds for the financing of private power plants that would be earning money in a competitive market. In addition, we believed there were other solutions to our grid challenges, including more focus on the demand side of the market, including demand response, energy savings programs and distributed energy resources, all of which could help customers provide solutions that also protect customers's pocketbooks.

Still, we fully recognize that SB 2627 and the constitutional amendment are now law, and the PUCT is required to implement these programs with tight statutory deadlines if the programs are to be successful. Given that both the loan program and completion bonus grant programs are now law, Texas must implement them in a way that helps meet the purpose - enabling new power plants that can meet energy demand when it is most needed - but without creating a perverse incentive that undermines the market structure. In addition, we believe given that the legislation and constitutional amendment authorizes up to $7.2 billion for loans and completion bonuses, the rules must allow for some public reporting and public input, while respecting the confidential nature of the applications.

Staff Questions: The Answer is Yes and 50.1%

In addition to comments on the text of the proposed rule, the commission invited interested persons to address the following questions related to eligibility requirements of the proposed rule. The Sierra Club responds in the affirmative to questions 1 and 2 and suggests that 50.1% is the appropriate minimum standard for question 3.

In addition to comments on the text of the proposed rule, the commission invites interested persons to address the following questions related to eligibility requirements of the proposed rule:

1. Should the rule require registration as a power generation company with the commission as a condition for eligibility to receive a loan? Why or why not?

Yes. The power plants that could be eligible for receiving a loan should register as a power generation company. The intent of the legislation was not to create a separate class of power generation companies outside of other existing power plants or future power plants, but to create a loan and incentive program to encourage development of dispatchable generation. Thus, all power plants that intend to apply for a loan should be required to register as a power generation company. In addition, since the legislation allows for both greenfield sites as well as expansion of existing generation resources, it only makes sense to have all types of generation receiving or applying for completion bonuses to register with the Commission as power generation companies. Indeed, PURA § 34.0106(d) states clearly "Each facility for which a loan or grant is provided under Section 34.0104 or 34.0105 must participate in the ERCOT wholesale electricity market." As such, they should register with both the PUCT and ERCOT.

2. Should the rule require registration as a Generation Resource with ERCOT as a condition for eligibility to receive a loan? Why or why not?

Yes. Similar to our answer to the previous question, registering as a generation resource with ERCOT should be required. This program is intended to incentivize the construction of dispatchable generation within ERCOT, and all resources intending to avail themselves of public funds should register with ERCOT as a Generation Resource. Again, the intent of the legislation was not to create a separate class of resources operating outside of the market, but to incentivize new generation in the market. Indeed, PURA § 34.0106(d) states clearly "Each facility for which a loan or grant is provided under Section 34.0104 or 34.0105 must participate in the ERCOT

wholesale electricity market." As such, they should register with both the PUCT and ERCOT.

3. How should the commission evaluate PURA § 34.0106(b)'s prohibition against providing a loan to an electric generating facility that will be used primarily to serve an industrial load or private use network?
a. Should the commission prescribe a percentage of total energy output that an electric generating facility must achieve to be eligible for a loan? If so, what percentage should the commission prescribe?

We would urge the Commission to focus primarily on dispatchable generation resources intended to serve the ERCOT wholesale market, and not allow taxpayer funds to be used for private use networks or industrial loads that for the most part are intended to self-provide energy to industrial loads. However, to the extent funding is available, at least 50.1% of the energy should be intended for the ERCOT wholesale electricity market. Just as the Commission can establish performance standards for "regular" power generation companies receiving a completion bonus, the Commission could only allow loans on the part of the industrial load or private use network generation that actually serves the larger market.

b. Should the commission employ another method to ensure that an electric generating facility primarily serves the ERCOT grid? If so, what method is appropriate and why?

No Comment

Comments on the Proposed Rule

First, we would note that we disagree with the analysis on governmental growth impact as required by Texas Government Code 2001.0221. While the rule does not require a new regulation - the loand program is by its nature voluntary - we believe it does create a new government program, since the PUCT will be charged with overseeing a new program that did not exist previously. Indeed PUCT will essentially become a bank, overseeing the loaning of money to private facilities.

In general, we believe the Commission has done a reasonable job with the proposal but we do have some specific suggestions, and one major addition we would like to see in the rule.

First under 25.514(c) (2), as required by legislation, the facility must have an output that can be controlled by forces under human control that is not an electric energy storage facility. While we agree that this language is justified given the clear statutory language that prohibits the use of completion bonuses for electric storage facilities, we would suggest some clarifying language that the simple presence of electric energy storage at a facility does not prevent other components of the facility from being eligible. In addition, thermal energy storage such as that provided by geothermal or hydrogen plants could clearly be eligible since the prohibition was for energy electric storage facilities, and not energy storage facilities..

We would suggest adding language such as "(A) Construction or operation of an electric energy storage facility, except that electric energy storage can be included as part of an overall facility, but that portion must be excluded from the application for a loan. Thermal energy storage facilities are eligible for a loan."

In addition, under (d) Notice of Intent to apply, we would suggest that information about regulatory and environmental permits be included in the initial application by adding an (F) Information related to the environmental regulatory process and efforts made by the applicant to meet any regulatory requirements from other state or federal agencies.

Under e) application requirements and process we would suggest under (5) Project Information that (A) include how the facility will contribute no only to meeting peak winter and summer load but overall energy use in the ERCOT region. Under (e) (5) C (ix) we would suggest adding timeline information on permits such as
(ix) A list of all required environmental, construction, and operating permits with current approval status and timelines for receiving final approval if known;

We would add similar information in (xii) by adding "approval of any required environmental, construction and operating permits" as part of the proposed project schedule.

In terms of the loan structure, the Commission may want to specifically name interconnection costs as part of the overall costs that must be considered in project costs, such as by adding the following language:

(g) Loan Structure
(1) Consist of no more than 60 percent of the estimated cost of the electric generating facility to be completed, including any interconnection costs that are the responsibility of the generating facility.

In terms of performance covenant for the facility, we believe that the median performance of being available during 50 of the 100 hours with the least quantity of operating reserves for the performance year is too low a standard. Instead we would suggest 70 as an appropriate standard. Being available for 70% of the most important hours seems like a reasonable minimum standard to get a taxpayer-backed loan from the State of Texas.

We do remain concerned with what actually happens with a facility that does not pay back its loan in an appropriate manner. We do appreciate the requirements placed in the proposed Loan Terms and Agreement for an equity capital contribution, collateral requirements, depositary agreement, security agreement and pledge agreement among other requirements, as well as the "Events of Default." However, to better comply with the provisions of PURA 34.0108, the Commission may want to make it clear that the Commission itself will not own any defaulted material project, but simply transfer it to a receivership established by the courts.

In addition to these specific comments, we believe that there should be some required reporting and ability for the public to make comments on proposed applications. While we understand that certain information must be made confidential as per the statutory process, and the decision to grant a loan is not subject to contested case process, the public does have the right to know how its money is being spent and to make comments. Specifically, the Commission should create a project in which public information on any application for a loan is made available through the PUCT interchange, and allow public comments to be made. In addition, we would suggest that the PUCT create a quarterly report on any applications received, or any loans approved or denied. This will also allow policymakers and the public at large to see if the program has been successful in incentivizing new construction of dispatchable generation.

Executive Summary: Sierra Club Comments on Project No. 55826

The Sierra Club opposed the constitutional amendment proposition to create a $7.2 billion loan and completion bonus grant program for dispatchable generation. However, given approval by voters, we are generally supportive of the staff proposal to implement the loan program.

In terms of the questions asked by the Commission, the Sierra Club responds in the affirmative to questions 1 and 2 and believes that any facility receiving a loan or applying for such a loan should register as a power generation company and also register with ERCOT as a generation resource. We would also suggest that 50.1% is the appropriate minimum standard for question 3 for a facility that also serves industrial loads or a private industry network to be eligible for a loan. We hope the Commission however prioritizes loans for facilities that are designed to serve the wholesale market.

In terms of the proposed rule itself, we believe that applicants should be required to provide information on how they will obtain environmental permits and resolve other regulatory compliance issues both in the initial application and as part of their project timeline. While we agree that electric energy storage facilities are not eligible for loans, the rules should make it clear that the simple presence of electric energy storage as part of a larger facility does not make the whole facility ineligible for loans. In addition, rules should make it clear that other types of storage could be eligible for a loan.

We would increase the minimum performance standard to receive a loan for being available for 70 hours out of the 100 EAF hours. Facilities must be in substantial compliance with environmental permit requirements to receive a loan.

We would clarify that the total cost of a facility should include any interconnection cost owed by the generator, and we would make it clear that in the event of a default the Commission and state could not retain ownership of the facility, but merely transfer it to a receivership following a legal process.

Finally, we would add a section making it clear that the public could have access and make comments on any applications for loans, and require the Commission to report quarterly on the progress of the program.