Filing Receipt

Filing Date - 2024-01-05 02:41:06 PM

Control Number - 55826

Item Number - 22

PUC PROJECT NO. 55826

TEXAS ENERGY FUND IN-ERCOT GENERATION LOAN PROGRAM	**§ § §**	**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

LOWER COLORADO RIVER AUTHORITY'S
COMMENTS ON THE PROPOSAL FOR PUBLICATION OF NEW 16 TAC §25.510

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

The Lower Colorado River Authority (LCRA) appreciates the opportunity to comment on the Proposal for Publication (PFP) of New 16 Tex. Admin. Code (TAC) § 25.520, relating to the Texas Energy Fund In-ERCOT Generation Loan Program. LCRA is committed to supporting reliability and resource adequacy in the ERCOT region and appreciates the Commission's diligent efforts to implement Senate Bill (SB) 2627 (88th R.S.) establishing the Texas Energy Fund.

To ensure that the loan program is administered effectively and consistent with the Legislature's intent to allow qualified entities like LCRA to participate in the program, LCRA provides the following comments and proposed redlines to the PFP. These clarifications are needed to ensure that a broad range of types of entities are eligible to participate in the loan program, including political subdivisions, in order to promote competition and ensure that the program supports only the most viable and cost-efficient generation capacity additions.

As early in the rulemaking process as practical, the Commission should give explicit direction to interested parties regarding whether Texas Energy Fund completion bonus grant award recipients will also be eligible to participate in the In-ERCOT Loan program. Knowing whether and to what degree participation in both programs is permissible will be a significant determinant for entities in deciding whether they will apply for the loan program. Notably, Senate Bill (SB) 2627 (88th R.S.) establishes a single pool of dollars for both the ERCOT loan and completion bonus grant programs,[1] and caps the total amount of megawatts (MW) of additional generation capacity that can be supported by the programs collectively.[2] Understanding how the programs will be administered and how the dollars allocated between the two programs is critical for entities seeking

[1] Tex. Util. Code § 34.0106(c) (Public Utility Regulatory Act, "PURA").

[2] *Id.* § 34.0104(d).

to invest in generation capacity in ERCOT to be able to efficiently plan and timely execute their projects.

I. RESPONSE TO STAFF QUESTIONS

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?*
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?*

The Commission should not require an applicant for the ERCOT loan program to register as a Power Generation Company (PGC). Such registration is not required by SB 2627, nor is it needed to ensure appropriate Commission oversight and jurisdiction over participating entities. Specifically, generation-owning entities other than registered PGCs are subject to full PUC oversight regarding mandatory weatherization requirements,[3] the filing of emergency operations plans,[4] and other similar regulatory requirements.[5]

Under SB 2627, the only type of entity that is expressly excluded from participating in the ERCOT loan program is an "electric utility other than a river authority."[6] As a river authority with a long history of safely, reliably and effectively owning and operating generation resources in ERCOT, LCRA is precisely the type of entity contemplated by the program, and it should not be excluded from participating in the program because it not a PGC as defined in statute and is not registered with the Commission as a PGC.[7]

It is appropriate, however, to require the participating entity to register the facility with ERCOT as a "Generation Resource." This registration is necessary and appropriate to ensure that the generation facilities under the loan program are subject to applicable PUC rules, ERCOT Nodal Protocols, and Nodal Operating Guide and other related provisions.

---

[3] 16 Tex. Admin. Code (TAC) § 25.55 (applicable to a "generation entity," defined as an "ERCOT-registered resource entity acting on behalf of an ERCOT-registered generation resource or energy storage resource").

[4] *Id.* § 25.25.53 (applicable to "an electric utility, transmission and distribution utility, power generation company (PGC), municipally owned utility, electric cooperative, and retail electric provider (REP), and to the Electric Reliability Council of Texas").

[5] *See, e.g., id.* § 25.91 (Generating Capacity Reports).

[6] Tex. Util. Code § 34.0104(e) (hereafter Public Utility Regulatory Act, "PURA").

[7] Although LCRA has statutory authority under the Texas Water Code to create non-profit corporations that may be registered with the Commission as PGCs, there is no reasonable basis for imposing this constraint on non-PGC entities like LCRA that may be considering investing capital in new generation projects and would otherwise be eligible for the ERCOT loan program.

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?*

   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?*

The most straightforward approach to determining whether new generation capacity additions co-located with an industrial load or part of a private use network (PUN) should be eligible for the In-ERCOT loan program is to require the minimum 100 MWs of new capacity to be dedicated to serving and participating in the ERCOT wholesale market. Requiring appropriate facility configurations and metering schemes at the outset, as well as an affidavit from the applicant committing that no less than 100 MW of capacity will be dedicated to serving the grid, avoids needless complexity and the policing of meter data during a historical look-back period to determine whether the energy output of the facility met the statutory requirements.

II. COMMENTS ON PFP

16 TAC § 25.510(b) Definitions.

To ensure that the Commission's expectations are clear to all stakeholders and entities seeking to participate in the loan program, the rule should define "senior debt." Specifically, the rule should expressly acknowledge that "the senior debt" secured by the facility means there is no debt with senior rights to the Texas Energy Fund loan; however, a borrower could have debt on parity with the loan. Borrowers may have existing debt with covenants that do not allow other debt to have a senior lien or security standing over their existing debt. Interpreting "senior debt" to include parity debt with a borrower's existing senior debt would give applicants greater flexibility to participate in the program while adhering to their existing debt structure and related covenants.

Accordingly, LCRA recommends that the PFP be amended to add a definition of "senior debt" that "includes the senior debt of the borrower securing the loan, which no other debt has a senior or priority security interest or lien superior to." Alternatively, if the Commission does not add a definition of "senior debt" to the rule, it should explicitly document its interpretation of "senior debt" in the preamble adopting the rule, as described further below in response to subsection (g).

16 TAC § 25.510(e) Application requirements and process.

25.510(e)(4)(C)(i)

As drafted, the PFP would require an applicant to submit an "equity" commitment letter demonstrating the ability to fund the necessary project equity, or 40 percent of the remaining estimated cost of construction, plus the required three percent construction escrow deposit amount. Nothing in SB 2627 requires an equity contribution to fund the remaining 40 percent of the project costs not covered by a fund loan. Rather, the statute requires only that the loan "is to be the senior debt secured by the facility."[8] The Commission should allow for greater flexibility on how the remainder of the costs of the project are financed by the borrower, which could include equity or other debt (on parity with or junior to the security securing the loan). Accordingly, LCRA proposes deletion of "equity" in this provision and other similar revisions for consistency throughout the PFP.

16 TAC § 25.510(g) Loan Structure.

25.510(g)(1) & (5)

Consistent with the intent and express language of SB 2627, as codified in PURA § 39.0104(b)(3), LCRA seeks clarification that the requirement for the loan to be "the senior debt" secured by the facility means that there is no debt with senior rights to the Texas Energy Fund loan. However, a borrower could be permitted to have debt on parity with the loan. As an alternative to defining "senior debt" in the rule, LCRA recommends that the Commission clarify in the preamble adopting new 16 TAC § 25.510 that all references to "senior debt" throughout the rule are interpreted to include the borrower's parity debt that is secured by a pledge of and lien on revenues. Specific acknowledgment that "senior debt" means debt having no senior rights to the security securing the fund loans, but which may be on parity with or equal to the borrower's other senior debt, would be appropriate and beneficial for inclusion in the preamble.

In addition, subsection (g)(5) proposes a requirement that the loan be structured as senior debt "secured by a first lien security interest in the assets and revenues of the project." However, certain potential loan participants like LCRA, which is a political subdivision of the state, are unable to provide the Commission with a security interest on physical assets because of existing

---

[8] PURA § 34.0104(b)(3).

statutory restrictions.[9] Under state law, the pledge, security, and lien on LCRA's revenues for the benefit of its parity debt is established and perfected. Borrowers should only be required to provide such security interests to the extent such requirement does not otherwise contravene existing law. Alternatives should be provided for borrowers who wish to participate in the loan program but cannot provide the security interests in the project assets because of existing statutory constraints. Such alternatives may need be negotiated between the borrower and the fund administrator on a case-by-case basis.

Should the Commission seek further protections in the absence of a requirement that all loan recipients grant a security interest in the assets and revenues of the project, it could add rule language that "senior debt" includes debt secured by a lien on assets or other pledge of or lien on revenues, *provided that* in the case of debt secured solely by a pledge of or lien on revenues, the borrower has a credit rating no lower than investment grade as determined by Moody's Investors Service, Inc., Standard & Poor's Rating Group, or Fitch Ratings (or any successor to such respective credit rating agency).

25.510(g)(3)

To ensure consistency between the language of section (g) and the voluntary prepayment provisions in section (h)(1)(E), LCRA recommends that subsection (g)(3) be modified to state that the repayment term of the loan be up to 20 years.

25.510(g)(4)

The preamble to the rule should clarify what is meant by "pro rata basis." LCRA supports an interpretation of "pro rata basis" to mean level debt service—i.e., in the style of a mortgage, with net annual debt service that is generally level throughout the life of the debt (except for a short period on first payment, if needed, to align loan debt service payment dates with the borrower's existing debt service payment dates).

16 TAC § 25.510(h) Loan Terms and Agreements.

As discussed above in response to subsection (g) of the PFP, certain borrowers may not be able to provide the Commission with the security interests contemplated by this subsection because of existing statutory restrictions. Borrowers should only be required to provide such security

[9] LCRA's enabling act, Chapter 8503, Texas Special District Local Laws Code, prohibits LCRA granting a mortgage or otherwise encumbering its assets (Section 8503.020), but is authorized to pledge its revenues to the payment of its debts (Section 8503.012).

interests to the extent such requirement does not otherwise contravene existing law. For purposes of the rule as a whole, any requirement that a borrower provide the Commission with a security interest in the project, its assets or property, deposit and security accounts, equity interests, or any other security interest, should only be required to the extent permitted by law. As the Legislature prohibited LCRA from granting a mortgage or otherwise encumbering its properties, but specifically authorized a river authority to participate in the Texas Energy Fund loan program in PURA § 34.0104(e), the PFP should be qualified to reconcile the acts of the Legislature.

Similarly, the proposed remedies for default in subsection (h)(7) are inapplicable under state law to potential borrowers like LCRA. For example, the Commission may not be able to appoint a receiver as contemplated by PURA § 34.0108 due to existing statutory restrictions. Borrowers should only be required to abide by this default remedy to the extent it does not otherwise contravene existing law.

III. PROPOSED REDLINES TO 16 TAC § 25.510

16 TAC 25.510(b) Definitions.

. . .

(3) Senior Debt – Shall include (i) the senior debt of the borrower securing the fund loan, which no other debt has a senior or priority security interest or lien superior to, and the borrower may have parity senior debt outstanding and provision for the issuance of additional parity senior debt, and (ii) debt secured by a lien on assets or other pledge of or lien on revenues, provided that the in the case of debt secured solely by a pledge of or lien on revenues, borrower has a credit rating no lower than investment grade as determined by Moody's Investors Service, Inc., Standard & Poor's Rating Group, or Fitch Ratings (or any successor to such respective credit rating agency).

16 TAC 25.510(e) Application requirements and process.

. . .

(4)

(C)(i) A~~n equity~~ commitment letter demonstrating the ability to fund the necessary project costs ~~equity~~ (40 percent of the remaining estimated cost of construction) plus the required three percent construction escrow deposit amount.

16 TAC 25.510(f) Evaluation Criteria.

. . .

(2)

(H) The sufficiency of the applicant's proposed sources of equity or debt to cover the costs of the facility not funded through a loan provided under this section;

16 TAC 25.510(g) Loan Structure.

. . .

(3) Have a repayment term of up to 20 years;

. . .

(5) Be structured as senior debt secured by a first lien security interest in the assets and revenues of the project, to the extent such security interest is permitted by law.

16 TAC § 25.510(h) Loan Terms and Agreements. A borrower must enter into one or more agreements with the commission that includes the terms of this section, to the extent permitted by law.

(1)

. . .

(B)

(ii) During the term of the construction loan, the borrower may request loan disbursements for up to 60 percent of the documented incurred project

construction and commissioning costs. The borrower will contribute the required ~~equity~~ commitment of no less than 40 percent to such construction and commissioning costs as the borrower makes draws during the construction loan period.

. . .

(C) ~~Equity e~~Capital contributions—the commission will verify the borrower's required ~~equity~~ capital contributions (40 percent of the estimated capital cost of the project).

IV. CONCLUSION

LCRA appreciates the Commission's consideration of these comments and looks forward to engaging in further discussions with ERCOT staff and stakeholders.

Respectfully submitted,

Emily R. Jolly
State Bar No. 24057022
Senior Vice President, Regulatory Affairs
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220
Telephone No.: (512) 578-4011
Facsimile No.: (512) 473-4010

Emily R. Jolly

PUC PROJECT NO. 55826

TEXAS ENERGY FUND IN-ERCOT GENERATION LOAN PROGRAM	§ § §	BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

LOWER COLORADO RIVER AUTHORITY'S EXECUTIVE SUMMARY

- As early in the rulemaking process as practical, the Commission should give explicit direction to interested parties regarding whether Texas Energy Fund completion bonus grant award recipients will also be eligible to participate in the In-ERCOT Loan program. Knowing whether and to what degree participation in both programs is permissible will be a significant determinant for entities in deciding whether they will apply for the loan program.
- The Commission should not require an applicant for the ERCOT loan program to register as a Power Generation Company (PGC), but should require that the entity register the generating facility with ERCOT as a "Generation Resource."
- The manner in which the Commission determines whether new generation capacity additions co-located with an industrial load or part of a private use network (PUN) are eligible for the In-ERCOT loan program should be straightforward and objective, determined at the outset of implementation of the program, and not be based on a complex formula or historical analysis of the energy output of the facility.
- The rule should define or provide an express interpretation of "senior debt" to mean there is no debt with senior rights to the Texas Energy Fund loan; however, a borrower could have debt on parity with the loan.
- Nothing in SB 2627 requires an equity contribution to fund the remaining 40 percent of the project costs not covered by a fund loan. Rather, the statute requires only that the loan "is to be the senior debt secured by the facility." The Commission should allow for greater flexibility on how the remainder of the costs of the project are financed by the borrower, which could include equity or other debt (on parity with or junior to the security securing the loan).
- Some potential loan participants like LCRA, which is a political subdivision of the state, are unable to provide the Commission with a security interest on physical assets because of existing statutory restrictions. Alternatives should be provided for borrowers who wish to participate in the loan program but cannot provide the security interests in the project assets because of existing statutory constraints.
- Similarly, the proposed remedies for default are inapplicable under state law to potential borrowers like LCRA. For example, the Commission may not be able to appoint a receiver due to existing statutory restrictions. Borrowers should only be required to abide by this default remedy to the extent it does not otherwise contravene existing law.