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APPLICATION OF AEP TEXAS INC. FOR AUTHORITY TO CHANGE RATES	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**AEP TEXAS INC.’S RESPONSE TO HUNT ENERGY NETWORK LLC’S
AND SMT TX MANAGEMENT LLC’S JOINT MOTION FOR CERTIFIED ISSUES**

On May 9, 2024, Hunt Energy Network LLC (“HEN”) and SMT TX Management LLC (“SMT”) filed a joint motion asking the State Office of Administrative Hearing (“SOAH”) Administrative Law Judges (“ALJs”) to certify three questions to the Public Utility Commission of Texas (“Commission”). Each question relates to whether distributed energy storage resources (“DESRs”) should pay for the distribution service they receive from transmission and distribution service providers. The ALJs should deny the motion because: (1) the Commission has previously addressed and repeatedly found that DESRs should pay for the distribution service they receive, (2) the Commission’s preliminary order specifically lists AEP Texas’ wholesale distribution tariff for DESRs as an issue to address in this case, and (3) the motion is untimely. The issues raised by HEN/SMT can be addressed in the normal course of this case without disrupting the existing schedule.

I. Proposed Questions for Certification

For ease of reference the proposed questions for certification are as follows:

1. As a matter of Commission policy, when charging the storage resource, should a DESR be required to pay a delivery charge for transmission service provided at distribution voltage? If yes, does that change the amount of the Contribution in Aid of Construction the DESR should pay to the Distribution Service Provider?¹

¹ As explained below, the Commission has already answered the first of the two questions listed as part of Question No. 1. The second question in Question No. 1 is a fact question that a rate case is designed to answer. The preliminary order in Docket No. 51409 agrees that the question “what costs can be included in the rate for wholesale transmission service at distribution voltage” is clearly a question that “involves factual determinations and should not be addressed as a threshold issue without an evidentiary record.” *Application of the City of San Antonio, acting by and through the City Public Service, to Amend its Wholesale Transmission Customer Primary Distribution Voltage Service Tariff*, Docket No. 51409, Preliminary Order at 4 (June 14, 2021).

2. Is requiring a DESR to pay a wholesale delivery rate when charging its storage facility consistent with PURA §35.004(b)'s requirement that utilities provide "nondiscriminatory access to wholesale transmission service"?
3. Is requiring a DESR to pay a wholesale delivery rate when charging its storage facility consistent with 16 TAC § 25.192(a)'s exclusion of wholesale storage from a utility's transmission service tariff and 16 TAC § 25.192(b)'s exclusion of storage entities from charges for transmission service delivered within ERCOT?

II. The Commission has repeatedly answered the questions the movants seek to certify.

Although the joint movants attempt to cast a "significant cloud of uncertainty" over the Commission's policy, the Commission's rules require distribution service providers to file a tariff for wholesale transmission service at distribution voltage if they currently provide or receive a request for such service.² In addition, the Commission's multiple written orders over the past several years have clearly and repeatedly answered the proposed questions for certification.³ HEN is well aware of these orders as it was a party in many of the cases in which they were issued.

The Commission has recognized since at least 2012 that DESRs should pay something for the service they receive. In the 2012 rulemaking on energy storage issues, the Commission found that "Wholesale load that is interconnected to a TSP's or DSP's system at distribution voltage receives 'wholesale transmission service at distribution level voltage' pursuant to § 25.192(d)(2), in which a TSP or DSP assesses a separate charge for that service. Wholesale storage load would be subject to any applicable tariffs or charges if it connects and receives service at the distribution level."⁴ At that time, at least one transmission and distribution service provider, Oncor, had a tariff for providing transmission service at distribution voltage.⁵ As explained in more detail further below, the Commission recently reauthorized an updated version of that tariff in Docket No. 53601, Oncor's most recent base rate case.

In 2022, the Commission also approved at least two other wholesale distribution service tariffs that apply to DESRs. In Docket No. 51409, the Commission approved a wholesale

² 16 Tex. Admin. Code ("TAC") § 25.191(d)(2)(C).

³ Hunt Energy Network LLC's and SMT TX Management LLC's Joint Motion for Certified Issues at 3-4 (May 9, 2024) (hereinafter "HEN/SMT Joint Motion for Certified Issues").

⁴ See *Rulemaking on Energy Storage Issues*, Project No. 39917, Order Adopting Amendments to § 25.192 and § 25.501 as Approved at the March 7, 2012 Open Meeting at 34 (March 30, 2012).

⁵ *Id.* at 33.

distribution service tariff that CPS Energy, Broad Reach Power, LLC, and Commission Staff agreed upon. HEN, a party to that proceeding, did not oppose the agreement. In that docket, a full five-member Commission concluded that “Under 16 TAC § 25.191, a transmission or distribution service provider is allowed to charge an entity engaging in wholesale storage for wholesale transmission service at distribution voltage.”⁶ The Commission also concluded that “CPS Energy’s proposed rates will provide nondiscriminatory access to wholesale transmission service at distribution voltage...in accordance with PURA § 35.004(b) and 16 TAC § 25.191(d)(2).”⁷ In that case, HEN made arguments similar to the current motion to certify issues,⁸ which the Commission rejected in its preliminary order.⁹

In Docket No. 51606, the Commission also considered briefing on the issue of whether a transmission or distribution service provider is allowed under 16 TAC § 25.191 to charge an entity engaging in wholesale storage for wholesale transmission service at distribution voltage.¹⁰ As it did in Docket No. 51409, the Commission found that a “transmission or distribution service provider is allowed to charge an entity engaging in wholesale storage for wholesale transmission service at distribution voltage.”¹¹

In Docket No. 53267, AEP Texas’ application for approval of a wholesale distribution service distributed generation energy storage tariff, the Commission’s preliminary order answered the joint movants’ proposed questions. In answering the first question, that order found that two other prior orders had already described in detail that “a transmission or distribution service provider is allowed to charge an entity engaging in wholesale storage for wholesale transmission

⁶ Docket No. 51409, Order at 6 at Conclusion of Law No. 11 (Sept. 15, 2022); *see also id.*, Preliminary Order at 2 (Jun. 14, 2021).

⁷ Docket No. 51409, Order at Conclusion of Law 13.

⁸ *See generally* Hunt Energy Network, L.L.C. Brief on Threshold Legal and Policy Issues, Docket No. 51409 (April 5, 2021).

⁹ Docket No. 51409, Preliminary Order at 2-4.

¹⁰ *Application of Medina Electric Cooperative, Inc. for a Wholesale Transmission Service at Distribution Voltage Tariff Under 16 TAC § 25.191(d)(2)(C)*, Docket No. 51606, Briefing Order at 2 (Mar. 19, 2021).

¹¹ Docket No. 51606, Preliminary Order at 2 (June 14, 2021); *see also id.*, Order at 8 at Conclusion of Law No. 11 (Oct. 20, 2022).

service at distribution voltage.”¹² In turn, the order held that the following issue did *not* need to be addressed:

Whether a transmission or distribution service provider is allowed under 16 TAC § 25.191 to charge an entity engaging in wholesale storage for wholesale transmission service at distribution voltage.¹³

In answering the second and third proposed questions for certification, the preliminary order further found that “Wholesale storage entities interconnected to a transmission or distribution service provider’s system at distribution voltage receive wholesale transmission service at distribution voltage under 16 TAC § 25.191(d)(2) and are assessed a separate charge for that service when they are acquiring energy. The prohibition in 16 TAC § 25.192(a) against a wholesale transmission service tariff applying to an entity engaging in wholesale storage is irrelevant to dockets like this one involving wholesale transmission service at distribution voltage under 16 TAC § 25.191.”¹⁴

Although Docket No. 53267 remains abated, the Commission even more recently answered the three proposed questions for certification in Docket No. 53601 when it approved an updated wholesale transmission service at distribution voltage tariff as part of Oncor’s most recent base rate case. The Commission answered the three proposed certified issues in its Docket No. 53601 Order on Rehearing in the subsection entitled “Cost Allocation – Wholesale Transmission Service at Distribution Voltage,” and more specifically in Findings of Fact Nos. 291 – 294:

- 291. A transmission or distribution service provider is allowed to charge an entity engaging in wholesale storage for wholesale transmission service at distribution voltage.
- 292. Providing delivery service to DESRs imposes costs on Oncor’s distribution system and failing to charge DESRs for their use of the system would shift those cost obligations onto other customers who would then be subsidizing the DESRs.
- 293. DESRs use Oncor’s distribution system to acquire energy to charge the resource, unlike other power generation companies and transmission energy storage resources. As a result, it is not unreasonably discriminatory for

¹² *Application of AEP Texas Inc for Approval of a Wholesale Distribution Service Distributed Generation Energy Storage Tariff*, Docket No. 53267, Preliminary Order at 4 (Aug. 25, 2022) (citing Docket No. 51409, Preliminary Order at 2-4 (June 14, 2021); Docket No. 51606, Preliminary Order at 2-4 (June 14, 2021)).

¹³ Docket No. 53267, Preliminary Order at 4.

¹⁴ Docket No. 53267, Preliminary Order at 4; *see also* Docket No. 51409, Preliminary Order at 3 and Docket No. 51606, Preliminary Order at 3.

Oncor's rates for distribution service to apply to DESRs, but not these other entities.

294. Rates XFMR and DLS should be applied to DESRs.¹⁵

Notably, HEN advanced the same arguments in that case that are contained in its current motion.¹⁶ HEN also filed a second motion for rehearing in that case complaining that the Commission's Order on Rehearing has "significant negative implications" for DESRs and their economic viability.¹⁷ Yet the Commission allowed that motion to be overruled by operation of law.

III. The Commission's preliminary order specifically lists AEP Texas' wholesale distribution tariff for DESRs as an issue to address in this case.

In every rate case, the Commission invites interested parties to provide a proposed list of issues as part of its Order of Referral. As part of the list of issues, interested parties are invited to "identify any issues that should not be addressed in the docket, and identify any threshold legal and policy issues that should be briefed for purposes of a preliminary order." AEP Texas filed a proposed list of issues, and listed among those issues was whether AEP Texas has properly assigned costs to DESRs:

47. Does AEP Texas provide wholesale transmission service at distribution voltage to any customers? If so, has AEP Texas properly allocated costs to, and designed rates for, those customers as required under PURA § 35.004(c)?

Commission Staff raised the same issue in its original and amended list of issues.¹⁸

The preliminary order highlights AEP Texas' proposal for a wholesale distribution tariff for energy storage resources by discussing it in a paragraph with its own separate subsection entitled "Wholesale Distribution Tariff for Energy Storage Resources." The preliminary order then identified two issues related to that proposed tariff to address in this case.

52. Does AEP Texas provide wholesale transmission service at distribution voltage to any customers? If so, has AEP Texas properly allocated costs to and designed rates for those customers as required under PURA § 35.004(c)?

¹⁵ *Application of Oncor Electric Delivery Company for Authority to Change Rates*, Docket No. 53601, Order on Rehearing at 49-50 and Findings of Fact Nos. 291-294 (June 30, 2023).

¹⁶ Docket No. 53601, Initial Brief of Hunt Energy Network, L.L.C (Oct. 14, 2022).

¹⁷ Docket No. 53601, Hunt Energy Network, L.L.C.'s Second Motion for Rehearing at 1-4 (July 25, 2023).

¹⁸ Commission Staff's Proposed List of Issues at 8 (Mar. 21, 2024) (Proposed Issue 50).

53. Should the Commission approve AEP Texas's proposed wholesale distribution tariff for energy storage resources?

The preliminary order did not list any issues that should not be addressed, nor did it invite briefing on any threshold or policy issues. The Commission adopted that order by consent. Thus, the Commission has already decided that these issues should be addressed as part of this rate case, and there is no need to certify the proposed questions back to the Commission.

IV. The motion to certify issues is untimely.

Even if the Commission had not already answered the questions the movants seek to certify, the ALJs should deny the motion to certify issues because the motion is procedurally inappropriate. First, as described above, the Commission already decided in its preliminary order that AEP Texas' proposed wholesale distribution tariff for energy storage resources should be addressed as part of this rate case. Second, certifying these issues now would jeopardize the hearing and post-hearing procedural schedule and reward an unexplained delay in raising their self-described "urgent" issues.¹⁹

AEP Texas filed its rate case on February 29, 2024. Yet the joint movants waited over two months—until May 9, 2024—just one week before their intervenor testimony is due to raise these so-called "threshold" issues. The joint movants had ample time and opportunity to raise their questions earlier, and instead they chose to wait and provided no explanation in their motion for the delay.

HEN intervened on April 5, 2024, and five days later filed a project letter to the Commissioners re-urging its position that it should receive distribution service for free.²⁰ The Commissioners did not respond to the letter. Since then, HEN has issued three sets of requests for information to AEP Texas about the proposed wholesale distribution tariff for energy storage resources.²¹ SMT, other than its motion to intervene, has not participated in the case until it joined the late-filed motion to certify issues.

¹⁹ HEN/SMT Joint Motion for Certified Issues at 2.

²⁰ Hunt Energy Network LLC's Motion to Intervene (Apr. 5, 2024); Hunt Energy Network LLC's Project Letter to the Commissioners (Apr. 10, 2024).

²¹ Hunt Energy Network LLC's First Set of Requests for Information to AEP Texas Inc. (Apr. 17, 2024); Hunt Energy Network LLC's Second Set of Requests for Information to AEP Texas Inc. (Apr. 24, 2024); Hunt Energy Network LLC's Third Set of Requests for Information to AEP Texas Inc. (May 6, 2024).

Because the joint movants waited so long to file their motion, certifying the issues now would not save the joint movants the “hundreds of thousands of dollars in legal and consulting expenses” they apparently plan to spend re-litigating issues in this case that they already lost in past cases before this Commission. As the joint movants recognize, even under the expedited ruling they have requested due to their self-created urgency,²² they would not receive an order from the SOAH ALJs on their motion until May 23, 2024, which is a week after their intervenor testimony is due. Therefore, joint movants presumably will have spent money drafting and reviewing the three sets of discovery they propounded and drafting pre-filed testimony.

Even if the SOAH ALJs certified the issues to the Commission under the expedited schedule requested by joint movants, the earliest the certified issues could be placed on the Commission’s agenda would be 20 days after its submission, or June 12th.²³ All pre-filed testimony, including Staff’s direct testimony, AEP Texas’ rebuttal testimony, and cross-rebuttal testimony on this issue, would have been submitted on or before June 12th, further underscoring the point that the joint movants waited too long to preserve any other party’s resources either.

Granting the certified issues now, however, could imperil the hearing and post-hearing procedural schedules, as the hearing is scheduled to take place beginning June 18. AEP Texas should not be penalized by a delay in the closing of the record in this proceeding or further tightening the post-hearing schedule due to delay by the joint movants, and the joint movants should not be rewarded for an untimely filing. The issues raised by HEN/SMT can be addressed in the normal course of this case without disrupting the existing schedule.

V. Conclusion and Prayer

The ALJs should deny the joint motion for certified issues. The proposed issues for certification have already been repeatedly answered by the Commission. That the joint movants have not liked the Commission’s answer each time is not a reason to certify issues. The Commission has now approved multiple tariffs for wholesale transmission service at distribution voltage demonstrating that as a threshold matter such charges are appropriate, non-discriminatory, and consistent with the Commission’s rules. And the Commission has explicitly made such findings in the orders in those dockets. In addition, the Commission has included in the preliminary

²² HEN/SMT Joint Motion for Certified Issues at 1.

²³ 16 TAC § 22.127(c).

order in this case whether AEP Texas has properly allocated to and designed rates for those customers taking transmission service at distribution voltage. Finally, the timing of the joint motion comes too late in the process in this case, with no justification provided for the delay. For all the reasons explained in this response, AEP Texas requests that the joint motion to certify issues be denied. AEP Texas requests any such other relief to which it has shown itself justly entitled.

RESPECTFULLY SUBMITTED,

/s/ Leila Melhem

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ATTORNEYS FOR AEP TEXAS INC.

Certificate of Service

I certify that on May 16, 2024, a true and correct copy of this document was served on all parties of record by electronic service consistent with the Commission's Second Order Suspending Rules filed on July 16, 2020 in Project No. 50664.

/s/ Stephanie Green