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OPEN MEETING COVER SHEET COMMISSIONER MEMORANDUM

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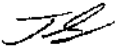
CAPTION: Docket No. 56693; SOAH Docket No. 473-24-21530 – Application of Entergy Texas, Inc. to Amend Its Certificate of Convenience and Necessity to Construct a Portfolio of Dispatchable Generation Resources

DESCRIPTION: Chairman Thomas Gleeson

Public Utility Commission of Texas

Commissioner Memorandum

TO: Commissioner Kathleen Jackson
Commissioner Courtney K. Hjaltman

FROM: Chairman Thomas J. Gleeson 

DATE: August 20, 2025

RE: August 21, 2025 Open Meeting – Item No. 21
Docket No. 56693; SOAH Docket No. 473-24-21530 – *Application of Entergy Texas, Inc. to Amend its Certificate of Convenience and Necessity to Construct a Portfolio of Dispatchable Generation Resources*

Before the Commission is a proposal for decision (PFD) that recommends denial of Entergy Texas's application for certification of the Legend and Lone Star power stations (the dispatchable portfolio). The PFD recommends that, although Entergy Texas faces an imminent need for capacity in 2028, a preponderance of the evidence shows that alternatives to this portfolio exist that Entergy Texas should have considered. I appreciate the administrative law judges' thoughtful work, including the preparation of an alternative set of findings of fact and conclusions of law that would support approval of the application despite its deficiencies. Ultimately, I do believe that when Entergy Texas's capacity shortfall is considered, Entergy Texas has demonstrated need and Entergy Texas's CCN should be amended to include the dispatchable portfolio.

I am not prepared to make a decision in this case tomorrow, but I would like to discuss possible conditions that should be included in an order granting this CCN application. Specifically, I would like to discuss whether to impose a cost cap for this CCN.

Cost Caps

I agree with the PFD's overall rationale for its recommended conditions.¹ Entergy Texas showed there is a need for generation resources, but Entergy Texas failed to prove that these are the right resources to meet that need. Even the check estimate and benchmark analysis that Entergy Texas offered as its choice of metrics for cost showed that the dispatchable portfolio is expensive, not cost competitive.² Therefore, I am considering inclusion of conditions regarding Entergy's cost recovery that could be imposed to insulate its customers from higher costs potentially resulting from Entergy not considering viable, lower-cost alternatives. While the Commission should determine that the need for additional generation facilities has been established, this finding of need should not be made at any cost.

¹ Proposal for Decision at 87 (June 30, 2025) (PFD).

² PFD at 64 and 66.

I am aware of only one instance in which the Commission has imposed a cost cap as part of a litigated, non-settled CCN case;³ this is a fact I have remarked upon before, the last time that I considered recommending that the Commission impose a cost cap.⁴ And it is also still true that the Commission ordinarily addresses the reasonableness of generation-related capital costs as part of the prudence review in a base-rate case. But in the face of this recurring problem—an imminent capacity need, and an inadequate consideration of alternatives to meet that need—I reach the conclusion that good outcomes require good incentives. Therefore, I believe we should seriously consider inclusion of a cost cap in this case. The cost cap options I am considering are:

- The capital costs for the dispatchable portfolio, inclusive of allowance for funds used during construction, on which Entergy Texas may seek recovery and a rate of return (such as through a generation cost recovery rider proceeding) would be capped at \$1.8 billion to limit the financial risk to Entergy Texas's ratepayers arising from an inadequate consideration of alternatives. This "soft cap" proposal was supported by TIEC.⁵ As part of TIEC's soft cap proposal, the Commission could also establish a presumption that, to the extent that capital costs exceed the \$1.8 billion cost cap, Entergy Texas did not act prudently in its expenditures for construction of the dispatchable portfolio. Entergy Texas could seek to place amounts in rate base above the \$1.8 billion cost cap; if so, Entergy Texas would have to rebut that presumption in the first base rate case in which Entergy Texas seeks to include capital costs for these facilities in rate base.
- Similar to our approach in the SPS case cited above, the Commission could also impose a hard cost cap.

I do not make these suggestions lightly, and I welcome further discussion on whether a cost cap is appropriate here, and if so, what kind of cost cap would be most appropriate in this case.

I look forward to discussing this matter with you at the open meeting.

³ *Application of Southwestern Electric Power Company for Certificate of Convenience and Necessity Authorization for a Coal-Fired Power Plant in Arkansas*, Docket No. 33891, Order at 7 (Aug. 12, 2008).

⁴ Docket No. 55255, Chairman Thomas Gleeson Memorandum at 4–5 (July 24, 2025).

⁵ TIEC Reply to Exceptions at 37-38.