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PROJECT NO. 58211

ERCOT STANDARD GENERATION	§	PUBLIC UTILITY COMMISSION
INTERCONNECTION AGREEMENT	§	
(SGIA)	§	OF TEXAS

**OFFICE OF PUBLIC UTILITY COUNSEL’S RESPONSE TO COMMISSION’S
REQUEST FOR COMMENTS ON THE ERCOT STANDARD GENERATION
INTERCONNECTION AGREEMENT (SGIA)**

The Office of Public Utility Counsel (OPUC), representing the interests of residential and small commercial consumers in Texas, respectfully submits these comments in response to the Public Utility Commission of Texas’s (Commission) request for comments on its proposed revisions to the Electric Reliability Council of Texas (ERCOT) Standard Generation Interconnection Agreement (SGIA or Agreement). The proposed revisions implement House Bill 1500 Section 9 by updating the SGIA language to incorporate “reasonable allowances” in the contract between generation resources and transmission service providers (TSPs) interconnecting directly with ERCOT at transmission voltage after December 1, 2025 pursuant to Public Utility Regulatory Act (PURA) § 35.004 and 16 Tex. Admin. Code (TAC) § 25.195.¹ The Commission’s request for comments requires public comments to be filed by July 31, 2025. Therefore, these comments are timely filed. OPUC makes the following comments:²

I. INTRODUCTION

OPUC appreciates the Commission’s continuing commitment to facilitating greater transparency related to implementation of the SGIA. Under 16 TAC § 25.195(c), “[A]s a condition of obtaining transmission service, a transmission service customer that owns electrical facilities in the ERCOT region must execute an interconnection agreement with the TSP to which it is

¹ House Bill (“HB”) 1500, 88th Texas Legislature (R.S.); *See also* 16 TAC § 25.195, relating to Terms and Conditions for Transmission Service; *See also* *Generation Interconnection Allowance*, Project No. 55566, Order Adopting Amendments to 16 TAC § 25.1951 (Feb. 15, 2024).

² OPUC’s proposed amendments to SGIA contract language are underlined and in red font.

physically interconnected” using the Commission-approved SGIA for “interconnection of a new transmission service customer that is a transmission-level generator.”³

The SGIA may be modified by mutual agreement of the parties to address specific facts presented by a particular interconnection request provided that the modifications do not frustrate the goal of expeditious, nondiscriminatory interconnection and are not otherwise inconsistent with the principles underlying the commission-approved SGIA. The SGIA must not be modified to relieve a transmission-level generator’s responsibility for all costs of installing interconnection facilities that are incurred by the TSP that exceed the allowance under subsection (f) of this section.⁴

OPUC generally supports the revision of the SGIA because it reasonably balances the amount of the allowances safeguarding consumers with the costs attributable to the generators requesting interconnection at transmission-level voltage. Of note, in proposed Section 4.1 of the SGIA, the Commission’s proposed language states: “[i]t is the intent of this section to give the TSP full control of the construction, composition, and quality of the TIF,”⁵ which OPUC supports. However, OPUC offers comments to address three concerns. First, any costs associated with the SGIA that are not used or useful to providing electricity services to consumers should not be included in a TSP’s transmission cost of service (TCOS) or the rates charged by the TSP. This leads to the second concern, which is ensuring the agreement process, the agreement, and actions arising from the agreement are transparent to support public interest. Finally, OPUC makes a general recommendation that the proposed SGIA language revert to using terminology that conforms to the drafting style used by the Texas Legislature. Doing so provides the public with consistency in reading, interpreting, and applying state statutes, agency rules, and related legal documents.

II. AMENDMENT TO ARTICLE 2, SECTION 2.2

OPUC recommends adding a sentence to the end of Article 2, Section 2.2 on page 9 of the SGIA that ensures any termination costs associated with the transaction of the SGIA are not passed

³ 16 TAC § 25.195(c).

⁴ *Id.*

⁵ Notice of Agreement, Article 4.1, Options, p. 11

on to residential and small commercial consumers. These two consumer classes have no control over the decision or action of the generators and TSPs to terminate the SGIA. Consequently, residential and small commercial consumers cannot be required to pay rates that incorporate such costs. To clearly establish consumer safeguards in the rate-setting process, OPUC proposes the following amendment:

2.2 Termination Costs. If a Party elects to terminate the Agreement pursuant to Section 2.1 above, the Generator must ~~shall~~ pay all costs incurred (or committed to be incurred) by TSP, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the Generator under this Agreement. In the event of termination by either Party, both Parties must ~~shall~~ use commercially reasonable efforts to mitigate the damages and charges that they may incur as a consequence of termination. Any costs incurred by the TSP or Generator under this section must not be included in the TSP's TCOS or rates. ~~The provisions of the Sections 2.2 and 2.3 shall survive termination of the Agreement.~~

III. AMENDMENT TO ARTICLE 4, SECTION 4.1(A)(iii)

It is important to ensure the terms of the SGIA and the parties' related actions are transparent to support public interest. To strengthen the public's confidence in the electricity market, it is imperative that the parties to the SGIA provide transparency regarding the reasons they are unable to meet the terms of the Agreement, especially if the inability results in accrued costs or damages. Transparency also holds the involved parties accountable in their conduct to properly execute their respective duties in the contract. To accomplish these objectives, OPUC proposes the following change to Article 4.1(A)(iii) on pages 11 through 12:

(iii) In the event the TSP reasonably expects that it will not be able to complete the TIF by the In-Service Date, the TSP will promptly provide written notice, to the Generator. The TSP must explain the reason for the delay and provide documentation indicating how the delay will affect the total cost of the project; steps the TSP will take to mitigate the delay and costs resulting from the delay; identify the new estimated start date; and provide information regarding how the TSP will meet the new estimated start date. If at the time the notice is sent the TSP does not know what the earliest start date would be, the TSP [and] will undertake Reasonable Efforts to meet the earliest date thereafter, and provide written notice as soon as possible to the Generator of the date the TSP will be ready. Any costs incurred by the TSP or Generator under this section must not be included in the TSP's TCOS or rates.

IV. AMENDMENT TO ARTICLE 4, SECTION 4.1(B)(i)

Similar to the reasons for OPUC's change to Article 2, Section 2.2, residential consumers and small commercial consumers must not bear the costs of any liquidated damages accrued under Article 4, Section 4.1(B)(i) of the SGIA. Consumers have no control or ability to preclude the generator and TSP from engaging in conduct that would lead to liquidated damages, and therefore should not be required to pay for damages in the TSP's rates. As such, OPUC proposes the following amendment to the parties' actions that could trigger payment of liquidated damages under Article 4, Section 4.1(B)(i) on page 12 of the Agreement:

B. The TSP must design, procure, and construct the TIF by the In-Service Date reflected in Exhibit "B", consistent with the following:

(i) The Parties acknowledge that the In-Service Date was either agreed upon through good faith negotiations or designated by the Generator upon failure of the Parties to agree. In the process of negotiating the In-Service Date, Generator will request a date upon which it reasonably expects it will be ready to begin use of the TIF and upon which it reasonably expects to begin doing so. Any date designated by the Generator must in no event be less than fifteen months from the date that all conditions of Sections 4.2 and 4.3 have been satisfied. If the TSP fails to complete the TIF by the In-Service Date reflected in Exhibit "B," the TSP must pay the Generator liquidated damages in accordance with Section 4.1.B(ii). Any amount paid by the TSP to the Generator under this section must not be included in TSP's TCOS or rates. In the event that ERCOT refuses to grant clearances to install equipment, the designated In-Service Date will

V. AMENDMENT TO ARTICLE 4, SECTION 4.1(B)(ii)

OPUC's proposes an amendment to the SGIA, page 11, Article 4, Section 4.1(B)(ii) to strengthen the public's confidence in the electricity industry while also protecting consumers from non-service related costs. If the amount of damages is uncertain, the Commission's current proposed language for calculating liquidated damages may cost consumers. To help set a clear standard for TSPs to use in calculating damages, OPUC recommends adding that TSP use "Good Utility Practice," which is already established in 16 TAC § 25.5(57) and referenced in the SGIA. The industry should understand how "Good Utility Practice" applies in calculating damages under

the SGIA and using the well-established term will provide legal clarification for any potential dispute regarding the TSP's calculation.

OPUC agrees that in-service delays will cost generators. However, the damages amount should be considered as minimum as possible and should not be passed on in rates to consumers. Again, because consumers have no control, power, authority, or ability to influence a generator or TSP's duties under the SGIA, any damages arising from the parties' performance or failure to perform are transactional costs, not service costs, and cannot be included in the TSP's rates.

Finally, OPUC's amendment recommends requiring TSPs to provide supporting documentation on the in-service date delay that indicates how each delay will increase the total cost of the project and steps the TSP will take to mitigate the identified delay to minimize any increased cost. This amendment ensures the involved parties are transparent and accountable to the public.

Therefore, OPUC proposes the following amendment:

- (ii) The Parties agree that actual damages to the Generator, in the event the TIF is not completed by the In-Service Date, may include Generator's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at the time this Agreement is executed and will be calculated using Good Utility Practice when TSP has determined and identified all actual costs for the TIF. The Parties agree that, because of such uncertainty, any liquidated damages paid by the TSP to the Generator must be an amount equal to 1/2 of 1% of the actual cost of the TIF per day. However, in no event will the total liquidated damages for which the TSP may be liable TSP exceed 20% of the actual cost of the TIF. The Parties agree that such liquidated damages are less than the Generator's actual damages. The Parties agree that the foregoing payments will be made by the TSP to the Generator as just compensation for the damages caused to the Generator, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this Agreement. Any damages calculated under this subsection must be supported by documentation. Any of the damages incurred under this subsection paid to the Generator must not be included in the TSP's TCOS or rates.

VI. AMENDMENT TO ARTICLE 4, SECTION 4.1(B)(iii)

OPUC supports the proposed language to the SGIA, page 13, in Article 4.1, Section 4.1.B(iii) excluding certain transactional costs and damages from the TSP's TCOS as these costs are not used or useful in providing electricity service to customers. Any damages arising from the parties' performance or failure to perform under the Agreement are transactional costs, not service costs, and therefore must be excluded in the TSP's TCOS or rate calculation. Consequently, OPUC proposes the following amendment to SGIA, Article 4, Section 4.1(B)(iii):

- (iii) Subject to Section 4.1.C, if the PUCT issues a final, appealable order excluding from TCOS any portion of the TIF costs, including higher contractor and vendor costs due to liquidated damage provisions in those contracts and insurance costs to cover liquidated damages, which costs may have been reasonably incurred but which the PUCT finds should not be recovered through TCOS, the Generator must reimburse the TSP for such costs in an amount not to exceed the difference between the TSP's estimate of the cost of the TIF under Section 4.1.A and the TSP's estimate of the cost of the TIF under Section 4.1.B as reflected in Exhibit "C." Such costs must be estimated using Good Utility Practice, and must not be included in TSP's TCOS or rates.

VII. AMENDMENT TO ARTICLE 4, SECTION 4.1(B)(v)

OPUC recommends an amendment to the proposed language in the SGIA on page 16, Article 4, Section 4.1(B)(v), which states in part that: "... the TSP will be subject to the payment of liquidated damages to the Generator only if the In-Service Date is not met solely due to the TSP's failure to complete the portion of the TIF for which the TSP has retained responsibility." For the same policy reasons discussed in the previous Sections of this Response, residential and small business consumers must not be forced to pay for any liquidated damages arising from the failure of the parties to the SGIA to perform their respective contractual obligations. Therefore, OPUC recommends the following amendment:

- v. If the In-Service Date has been designated by the Generator upon a failure of the Parties to Agree on the In-Service Date, the TSP may, at its discretion, require the Generator to subcontract with the TSP for all or part of the design, procurement and construction of the TIF in accordance with the TSP's standard subcontractor agreements. In such event, the TSP will be

subject to the payment of liquidated damages to the Generator only if the In-Service Date is not met solely due to the TSP's failure to complete the portion of the TIF for which the TSP has retained responsibility. Any liquidated damages payments made under this subsection by the TSP must not be included in the TSP's TCOS or rates. To the extent the Generator acts as a subcontractor to the TSP the following requirements apply:

VIII. AMENDMENT TO ARTICLE 4, SECTION 4.1(C)

Article 4, Section 4.1(C) states in part that “[t]he TSP must apply to have the full costs of the TIF for which it is responsible, including any Transmission System Upgrades deemed necessary by the TSP, and to the extent authorized by the allowance established under 16 TAC § 25.195 to be included in TCOS.” OPUC recommends an amendment to clarify this language to make it consistent with 16 TAC § 25.195(f)(1), which provides that a “new transmission-level generator seeking interconnection to a TSP’s transmission network is responsible for the cost of installing step-up transformers and protective devices at the point of interconnection capable of electrically isolating the transmission-level generator.” Subsection 25.195(f)(3) states that “if the SGIA between a transmission-level generator and TSP is executed after December 31, 2025, then the interconnecting transmission-level generator is responsible for all costs of installing interconnection facilities that are incurred by the TSP that exceed the allowance established in accordance with this paragraph.”⁶ Accordingly, OPUC proposes adding the following language to Article 4, Section 4.1(C):

- C. The TSP must apply to have the full costs of the TIF for which it is responsible, including any Transmission System Upgrades deemed necessary by the TSP, and to the extent authorized by the allowance established under 16 TAC § 25.195 to be included in TCOS. The generator should be responsible for any cost incurred by the TSP for installing step-up transformers and protective devices at the point of interconnection capable of electrically isolating the transmission-level generator. The TSP must not include such costs in its TCOS or rates. Consistent with 16 TAC

⁶ 16 TAC § 25.195(f)(3).

§ 25.195, upon initial execution of this Agreement the applicable allowance is the amount established or adjusted by the PUCT for that calendar year in which NTP occurs.

IX. AMENDMENT TO ARTICLE 10, SECTION 10.16(A)

Similar to the reasons for OPUC's changes to Article 2, Section 2.2 and Article 4, Sections 4.1(A)(iii), 4.1(B)(i), (ii) and (v), and 4.1(C), residential consumers and small commercial consumers must not pay for any damages generators and TSPs accrue under the SGIA. Although Section 10.16(A) mostly describes the types of damages that generators and TSPs cannot collect under the SGIA, it is still important to emphasize in the contract that any damages incurred under Section 10.16(A) cannot be passed through to consumers. Again, consumers have no control, power, authority, or ability to influence the execution of the parties' duties under the SGIA. Therefore, any damages, including litigation costs, arising from the parties' performance or failure to perform are transactional costs, not service costs, and must not be included in the TSP's rates. Consequently, OPUC makes the following proposed change to Article 10, Section 10.16(A) on page 43:

10.16 Damages. OTHER THAN THE LIQUIDATED DAMAGES DESCRIBED AND CALCULATED UNDER SECTION 4.1.B, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER ANY PROVISION OF THIS AGREEMENT FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. NONE OF THE DAMAGES SET FORTH IN THIS SECTION MAY BE INCLUDED IN TCOS OR RATES BY THE TSP.

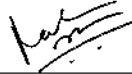
A. THE FOREGOING DAMAGES INCLUDE, WITHOUT LIMITATION, THE FOLLOWING: LOSS OF PROFIT OR REVENUE; LOSS OF THE USE OF EQUIPMENT; COST OF CAPITAL, COST OF TEMPORARY EQUIPMENT OR SERVICES; AND COST OF LITIGATION INCLUDING ATTORNEY'S FEES. THIS LIMITATION APPLIES WHETHER SUCH DAMAGES ARE BASED IN WHOLE OR IN PART [X] IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY.

X. CONCLUSION

OPUC appreciates the opportunity to provide this response to the Commission's request for comments on the ERCOT SGIA and looks forward to working with Staff and other stakeholders on this project.

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OFFICE OF PUBLIC UTILITY COUNSEL'S EXECUTIVE SUMMARY

OPUC is generally supportive of the Commission's efforts to facilitate standard generator interconnection agreement. To that end, OPUC recommends the following:

- 1) Amend Article 2, Section 2.2 to include at the end of the paragraph that any contract termination costs "incurred by the TSP or Generator under this section must not be included in the TSP's TCOS or rates."
- 2) Amend Article 4, Section 4.1(A)(iii) to provide better transparency for In-Service delays by requiring TSP to provide the following information in writing to the generator: reasons for the delay; how the delay will affect the project's total cost; TSP's steps to mitigate the delay and resulting costs; the new estimated start date or if unknown, notice as soon as the TSP knows the date. Also amend Section 4.1(A)(iii) to clarify that any costs incurred by a delay of an In-Service date must not be included in TSP's TCOS or rates.
- 3) Amend Article 4, Section 4.1(B)(i) to include a sentence that clarifies any liquidated or actual damages referenced in that section cannot be included in TSP's TCOS or rates charged to consumers.
- 4) Amend Article 4, Section 4.1(B)(ii) to change the formula used by the TSP to calculate damages charged to the generator to be according to "Good Utility Practice." The proposed amendment also adds that the parties must provide documentation to support any damage calculation, and that no damages incurred under that section can be included in TSP's TCOS or rates to consumers.
- 5) Amend Article 4, Section 4.1(B)(iii) to state that the damages or costs referenced in that subsection must not be included in TSP's TCOS or rates to consumers.
- 6) Amend Article 4, Section 4.1(B)(v) to exclude liquidated damages incurred as a result of a delay to the In-Service Date solely because of TSP's failure to complete its TIF responsibilities from being included in TSP's TCOS or rates.
- 7) Amend Article 4, Section 4.1(C) to better conform to 16 TAC § 25.195 by clarifying that generators are responsible for certain installation costs, and such costs must be excluded from TSP's TCOS or rates.
- 8) Amend Article 10, Section 10.16 to clarify that damages, litigation costs, and attorney's fees incurred under the SGIA must not be included in the TSP's TCOS or rates to consumers. The amendment also makes a grammatical correction of "whole or in party" to "whole or in part."