

PROJECT NO. 31852

RULEMAKING RELATING TO § PUBLIC UTILITY COMMISSION
RENEWABLE ENERGY §
AMENDMENTS § OF TEXAS

PROPOSAL FOR PUBLICATION OF NEW §25.174
AS APPROVED AT THE AUGUST 23, 2006 OPEN MEETING

The Public Utility Commission of Texas (commission) proposes new §25.174, relating to Competitive Renewable Energy Zones. The proposed new rule will implement Senate Bill 20, 79th Leg., 1st C.S. (2005), which amended Public Utility Regulatory Act (PURA) §39.904, relating to the Goal for Renewable Energy. The new §25.174 will provide procedures for the establishment of Competitive Renewable Energy Zones (CREZs) to facilitate delivering to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in Texas. This new rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 31852 is assigned to this proceeding.

PURA directs the commission to consider the level of financial commitment by generators when designating CREZs. Under the new section, financial commitment may be demonstrated by existing development, by signed interconnection agreements with transmission owners, by executed leasing agreements with landowners, or by making deposits for the purchase of congestion revenue rights (CRRs) in the event that an area becomes a CREZ.

In addition to comments on various provisions of the proposed rule, the commission requests comment on the following questions.

1. *Financial commitments by generators.* Proposed subsection (b)(4)(A) allows generators to indicate interest in a potential CREZ by posting non-refundable deposits of different amounts at different stages. Are the amounts large enough to indicate a sufficient degree of commitment by a generator to assist the commission in designating CREZs and granting certificates of convenience and necessity for transmission lines related to CREZs? If not, how large should the requirement be?
2. *Prioritization of dispatch.* Subsection (b)(4) provides for assigning dispatch priority to renewable generators located in a CREZ if they fulfill all financial requirements arising from that paragraph. Please explain why this provision is better or worse than Subsection (b)(3), which uses deposits reserved for the future purchase of congestion revenue rights. In particular, please comment on each alternative's consistency with PURA Chapter 35 and ERCOT protocols.
3. *Timeliness of completing upgrades.* Subsection (a)(5)(E) provides that in its final CREZ order, the commission may impose reporting requirements and other measures to ensure timely completion of CCN applications and construction upgrades. What specific measures would be appropriate for the commission to consider in a final order, and should they be specified in this rule?
4. *Length of process.* The proposed rule establishes deadlines for a final CREZ order, and for utilities to file a CCN application. Please identify steps in the CREZ process that can be shortened or consolidated.

Dr. David Hurlbut, Senior Economist, Electric Industry Oversight Division, has determined that for each year of the first five-year period the proposed new section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the new section. Recent wind power development in West Texas indicates there will be significant fiscal implications for local governments where CREZs are to be located. The value of local property tax bases grew significantly as a result of wind power development, and similar growth would be expected to occur in any area designated by the commission as a CREZ.

Dr. Hurlbut has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to increase the amount of electricity delivered to customers using renewable generation resources in Texas, consistent with the goals that have been established in state law. The specific benefits include increasing the state's use of a cost-free fuel source, reducing the use of generation technologies that result in air emissions, and diversifying the state's electric generating resource portfolio.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be economic costs to persons who are required to comply with the proposed section. The cost of additional transmission related to CREZ development will increase transmission costs borne by customers. However, it is expected that the benefits accruing from implementation of the proposed sections will outweigh the costs, and that the sections will achieve the Legislative goals with the least cost to consumers.

Dr. Hurlbut has also determined that for each year of the first five years the proposed sections are in effect, certain local economies are likely to experience temporary employment growth and some additional permanent jobs. The commission's designation of CREZs will indicate the counties where future growth in renewable energy development is most likely to take place. Construction of new wind-powered generation facilities is expected to accelerate as developers try to take advantage of the federal Production Tax Credit before it expires on December 31, 2007. During this period, transmission construction may also stimulate temporary job growth.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, October 12, 2006, at 9:30 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 25 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 38 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 31852.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 39.101(b)(3), and 39.904 (Vernon 1998 & Supplement 2006) (PURA). Section 14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.101(b)(3) provides that a customer is entitled to have access to providers of energy generated by renewable energy resources; and §39.904, provides the commission the power to adopt rules necessary to administer and enforce the programs to promote the development of renewable energy technologies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.101, and 39.904.

§25.174. Competitive Renewable Energy Zones.

- (a) **Designation of competitive renewable energy zones.** The designation of Competitive Renewable Energy Zones (CREZs) pursuant to Public Utility Regulatory Act (PURA) §39.904(g) shall be made through a contested-case proceeding initiated by commission staff, for which the commission shall establish a procedural schedule. The commission shall consider the need for proceedings to determine CREZs in 2006 and in subsequent years as deemed necessary by the commission.
- (1) Commission staff shall initiate a contested case proceeding within five working days of receiving the information required by paragraph (2) of this subsection. Any interested entity that participates in the contested case may nominate a region for CREZ designation. An entity may submit any evidence it deems appropriate in support of its nomination, but it shall include information prescribed in paragraph (2)(A)-(C) of this subsection.
- (2) By December 1, 2006, the Electric Reliability Council of Texas (ERCOT) shall provide to the commission a study of the wind energy production potential statewide, and of the transmission constraints that are most likely to limit the deliverability of electricity from wind energy resources. ERCOT may consult with other regional transmission organizations, independent organizations, independent system operators, or utilities in its analysis of regions of Texas outside the ERCOT power region. At a minimum, the study submitted by ERCOT shall include:

- (A) A map and geographic descriptions of regions that can reasonably accommodate at least 1,000 MW of new wind-powered generation resources;
 - (B) An estimate of the generating capacity in megawatts (MW) and annual production potential in megawatt-hours (MWh) that may be reasonably expected for each region;
 - (C) A description of the transmission system upgrades necessary to provide transmission service to the region, a preliminary estimate of the cost, and identification of the utility or utilities whose existing transmission facilities would be directly affected;
 - (D) An analysis of potential zone combinations;
 - (E) An estimate of the additional ancillary service capacity required to maintain system reliability; and
 - (F) The amount of wind-powered generating capacity already in service in the zone, the amount not in service but for which interconnection agreements have been signed, and the amount under study but for which no interconnection agreements have been signed.
- (3) The Texas Department of Parks and Wildlife may provide an analysis of wildlife habitat that may be affected by renewable energy development in any candidate zone, and may submit recommendations for mitigating harmful impacts on wildlife and habitat.
- (4) In determining whether to designate an area as a CREZ and the number of CREZs to designate, the commission shall consider:

- (A) whether renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;
 - (B) the cost of constructing transmission capacity necessary to deliver to electric customers the electric output from renewable energy resources in the candidate zone;
 - (C) the benefits of renewable energy produced in the candidate zone;
 - (D) the level of financial commitment by developers of renewable energy resources; and
 - (E) any other factors considered appropriate by the commission as provided by PURA.
- (5) The commission shall issue a final order within six months of the initiation by commission staff of a CREZ proceeding, unless it finds good cause to extend the deadline. For each new CREZ it orders, the commission shall specify:
- (A) locations where renewable energy resources may connect to CREZ transmission facilities;
 - (B) any necessary transmission upgrades inside the CREZ;
 - (C) the minimum generating capacity from renewable energy resources that the CREZ may accommodate and, if appropriate, the maximum generating capacity from renewable energy resources that the CREZ may accommodate;
 - (D) any necessary transmission upgrades outside the CREZ;

- (E) the entities responsible for the transmission upgrades, and any reporting requirements and other appropriate measures to ensure that the entities complete the ordered upgrades in a timely manner; and
- (F) any other requirement considered appropriate by the commission.

(b) **Level of financial commitment by generators.**

- (1) A renewable energy developer's existing renewable energy resources, signed interconnection agreements for planned renewable energy resources, and executed leasing agreements with landowners in a proposed CREZ are examples of indications of financial commitment by developers to the CREZ.
- (2) A non-utility entity's commitment to build and own transmission facilities dedicated to delivering the output of renewable energy resources in a proposed CREZ to the transmission system of an electric utility or a transmission utility in Texas or a deposit or payment to secure or fund the construction of such transmission facilities by an electric utility or a transmission utility to deliver the output of a renewable generation project in Texas is an indication of the entity's financial commitment to the CREZ.
- (3) To demonstrate a financial commitment for an area as a proposed CREZ for which transmission service would be provided by an ERCOT utility, a developer may deposit funds with ERCOT toward the future purchase of congestion revenue rights (CRRs) that would be created in the event that the commission selects that region as a CREZ.
 - (A) After the commission establishes the date for a proceeding to determine CREZs, ERCOT shall conduct an open season of not less than 60 days for

accepting deposits for the purchase of CRRs . After the close of the open season, ERCOT shall report to the commission the total deposits for each candidate zone. A developer of renewable energy resources submitting a deposit shall specify a potential CREZ or a county, and shall state the developer's anticipated development level in megawatts of renewable energy capacity.

- (B) Deposited amounts, including accrued interest, may be applied towards the purchase of point-to-point CRRs for the export of electricity from a renewable energy resource in the CREZ for which the funds were deposited, and shall be used for no other purpose. CRRs may be of any type and any duration, as long as the source point for the CRR is a renewable energy resource in the CREZ. Ownership of an account is transferable, but the deposits are not refundable except as provided in subparagraph (E) of this paragraph.
- (C) A deposit pursuant to this paragraph does not entitle the developer to any CRRs. A developer making a deposit shall comply with all requirements set forth in the ERCOT protocols in order to purchase CRRs.
- (D) A two-year CRR for a CREZ shall convert to a six-year CRR if the CRR is purchased with funds deposited pursuant to this paragraph, and if the deposit specified the CREZ included in the area served by the CREZ.
- (E) Any funds deposited pursuant to this paragraph shall be refunded to the developer making the deposit with accrued interest if the commission does not designate the associated region as a CREZ once the proceeding to

determine CREZs is completed or the commission notifies the utilities that are identified to construct transmission facilities related to a CREZ to discontinue planning related to filing an application for a certificate of convenience and necessity for such transmission facilities. The commission shall order a refund upon demonstration by the developer that it has completed construction of renewable energy resources in the CREZ at or in excess of the anticipated development level specified at the time the deposit was made.

- (4) In addition to the financial commitments reflected in paragraphs (1)-(3) of this subsection, a renewable energy developer may commit to a progressive financial commitment (PFC) schedule of potentially three stages of progressively increasing deposits of money to demonstrate interest in developing a specific quantity of renewable generation capacity associated with a specific candidate CREZ. Renewable energy capacity that completes a PFC schedule and is placed in commercial operation will receive a dispatch priority for operating in the CREZ to be specified in the CREZ determination order. All PFC deposits will be made to ERCOT. The commission will order a refund of Stage Two and Stage Three PFC deposits in the event the candidate CREZ is not designated as a CREZ, the certificates of convenience and necessity applications relating to a CREZ are denied, the developer's project is limited pursuant to subsection (d)(3) of this section, or after the developer has completed construction of renewable energy resources in the CREZ in proportion to the MW of commercial renewable resource to which they are assigned.

- (A) Stage One PFC deposits of \$100 per MW of interest will be made in any open season conducted pursuant to paragraph (3)(A) of this subsection. Stage One PFC deposits received from wind developers are non-refundable and will be used to support studies as directed by the commission of technical, economic, environmental and customer-related issues relevant to wind power development.
- (B) Stage Two PFC additional deposits of \$2,000 per MW of interest, limited to the MW of interest established by each developer in its Stage One PFC deposit, will be made in any open season conducted pursuant to subsection (d)(1) of this section.
- (C) Stage three PFC additional deposits of \$4,000 per MW of construction commitment interest, limited to the MW of interest established by each developer in its Stage Two PFC deposits, will be made in any open season conducted pursuant to subsection (d)(4) of this section.
- (c) **Plan to develop transmission capacity.**
- (1) No later than one year after an order by the commission designating a CREZ, the utility or utilities providing transmission service in or to a CREZ shall file applications for all required certificates of convenience and necessity (CCNs) for transmission facilities identified by the commission in accordance with subsection (a)(5)(B) and (D) of this section that are necessary to deliver to electric customers the electric output from renewable energy technologies in the CREZ, subject to the provisions of subsection (d) of this section. The commission may allow additional time for a utility to file an application upon a showing of good cause by the utility.

The commission may establish a filing schedule if a CREZ order requires numerous CCN applications.

- (2) A CCN application for a transmission project intended to serve a CREZ need not address the criteria in PURA §37.056(c)(1) and (2), except as provided in subsection (d)(4) of this section.
 - (3) If an ERCOT utility receives a request to connect a non-renewable generation facility to transmission facilities approved under this section, the utility shall presume for the purpose of planning that the CREZ transmission facilities are fully utilized by renewable generation facilities. Transmission service to new non-renewable generation facilities provided by an ERCOT utility shall be in addition to any CREZ transmission facilities ordered under this section, and shall be governed by §§25.191-25.203 of this title (relating to Open-Access Transmission Service within the Electric Reliability Council of Texas).
- (d) **Requests for transmission service from ERCOT utilities.**
- (1) As part of, or following the issuance of an order determining a CREZ for which transmission service would be provided by an ERCOT utility, the commission may establish an open season for developers of renewable energy facilities to request transmission service from points within the CREZ. To request transmission service under this paragraph, the developer shall notify the commission of its request, specifying the level in megawatts of renewable capacity and location of generation and transmission facilities it plans to construct and demonstrate that it has initiated the process for requesting such service by complying with §25.198(c)(1) of this title (relating to Initiating Transmission Service).

- (2) If at the end of the open season the aggregate level of renewable energy for which transmission service is requested for a CREZ exceeds the minimum level of renewable capacity specified in the CREZ order, the commission shall notify the utilities identified to provide the transmission service to proceed with planning for the filing of the CCN application related to the additional facilities needed to provide the transmission service. If the aggregate level of renewable energy for which transmission service is requested for a CREZ does not equal or exceed the minimum level of renewable capacity specified in the CREZ order, the commission may notify the utilities identified to provide the transmission service to discontinue the planning related to the filing of the CCN application and not to file the application.
- (3) If the aggregate level of renewable energy for which transmission service is requested for a CREZ exceeds the maximum level of renewable capacity specified in the CREZ order, the commission may initiate a proceeding to limit interconnection to the transmission system in the CREZ to a level of renewable resources that is not in excess of the maximum and to identify the developers whose projects may interconnect to the transmission system in the CREZ. Priority in interconnecting to the transmission system shall be based on financial commitments of the developers, in accordance with subsection (b) of this section. In determining such priority, the commission may also consider the progress that a developer has made in obtaining the transmission studies required for a new generator interconnection as indications of financial commitment.

- (4) During the CCN proceeding for the approval of transmission facilities to provide transmission service from a CREZ, the commission may establish an open season for developers of renewable energy facilities to request interconnection agreements for transmission service from points within the CREZ. A developer that requests an interconnection agreement shall comply with the deposit requirement in §25.195(c) of this title (relating to Terms and Conditions for Transmission Service). If the aggregate level of renewable energy for which interconnection agreements are requested for a CREZ does not equal or exceed the minimum level of renewable capacity specified in the CREZ order, the commission may deny the CCN application on the basis that there is not a need for the facilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 25th DAY OF AUGUST 2006 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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