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DOCKET NO. 35665

COMMISSION STAFF'S PETITION § PUBLIC UTILITY COMMISSION
FOR THE SELECTION OF ENTITIES §
RESPONSIBLE FOR TRANSMISSION § OF TEXAS
IMPROVEMENTS NECESSARY TO §
DELIVER RENEWABLE ENERGY §
FROM COMPETITIVE RENEWABLE §
ENERGY ZONES §

RESPONSIVE TESTIMONY AND EXHIBITS

OF

RALPH G. GOODLET, JR.

FOR

SHARYLAND UTILITIES, L.P.

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1 justification for awarding CREZ transmission facilities to new entrants that do not
2 already have CCNs and have not previously operated as regulated utilities in
3 ERCOT is if they are able to add value to the overall CREZ process. The CTP
4 filings of the new entrants do not contribute anything new or innovative; instead,
5 they propose to operate in essentially the same manner as existing TSPs. Because
6 of the potential disadvantages arising out of selection of a new entrant – possible
7 delay due to legal challenges to their right to obtain CCNs, lack of knowledge of
8 Commission and ERCOT procedures, and the need to develop resources and staff
9 if they are selected – I conclude that they do not add any value to the CREZ
10 process.

11 I then discuss the CTP filings by the municipal entities. I conclude that
12 the principal concern with those proposals is that the entities do not plan to file
13 CCN applications with the Commission even though the facilities they propose to
14 construct are located well outside their traditional boundaries. These proposals
15 raise significant policy concerns as well as questions as to the unique status of
16 municipal utilities under PURA. In addition, they create opportunities for delay
17 due to potential litigation regarding the municipalities' proposals to condemn
18 property of landowners located hundreds of miles from their boundaries.

19 I then address flaws in the rate proposals submitted by Cross Texas and
20 Tejas Transmission. As I explain, neither of those proposals provides any
21 benefits to ratepayers. Instead, they appear to be designed to benefit Cross Texas
22 and Tejas.

1 Finally, I introduce the other witnesses who will be presenting responsive
2 testimony on behalf of Sharyland.

III. OVERVIEW OF CTP FILINGS

3 **Q. PLEASE PROVIDE AN OVERVIEW OF THE SEPTEMBER 12, 2008 CTP**
4 **FILINGS FROM SHARYLAND'S PERSPECTIVE.**

5 A. There were a number of CTP proposals from several parties, including five (now
6 four, with the withdrawal of Trans-Elect) new entrants, municipal entities seeking
7 to construct CREZ facilities outside their traditional service areas, and of course
8 the Joint Parties, who submitted the only comprehensive plan to construct CREZ
9 facilities in the proceeding. My initial reaction to the filings is that they illustrate
10 the strong interest in investing in transmission infrastructure in ERCOT. I
11 attribute this in large part to the attractiveness of the Commission's Transmission
12 Cost of Service (TCOS) mechanism as well as the favorable regulatory
13 environment in Texas. The TCOS mechanism is viewed very favorably by equity
14 investors and lenders, because of the relatively predictable cash flow that the
15 mechanism provides as well as the opportunity to begin recovering investments as
16 soon as a transmission facility is placed in service through the Commission's
17 interim adjustment procedure. The attractiveness of the TCOS mechanism has
18 undoubtedly prompted much of the interest in building CREZ facilities from
19 entities that have no prior experience in constructing transmission in ERCOT or
20 functioning as regulated utilities. With the exception of Lone Star, however, no
21 proposals were submitted by new entrants that have substantial experience in

1 constructing and operating transmission facilities as regulated utilities in other
2 states.

3 **Q. DID SHARYLAND SUPPORT THE COMMISSION'S ADOPTION OF A**
4 **COMPETITIVE SELECTION PROCESS?**

5 A. Yes. Sharyland was one of the relatively few parties in Docket No. 34560, the
6 rulemaking proceeding that led to the adoption of Substantive Rule 25.216, that
7 supported the adoption of a competitive selection process for TSPs to construct
8 CREZ facilities. Sharyland believed then (and still believes) that there can be
9 value in opening up the selection process for determining which TSPs will
10 construct CREZ facilities, given the magnitude of the investment involved and the
11 need to assure that the facilities are completed in an expeditious and cost-effective
12 manner.

13 **Q. GIVEN SHARYLAND'S SUPPORT FOR THE TSP SELECTION RULE,**
14 **WHAT IS YOUR REACTION TO THE CTP FILINGS BY OTHER**
15 **PARTIES?**

16 A. I believe it is useful for the Commission to have a variety of options available to it
17 in order to assure that it approves the "most beneficial and cost-effective"
18 transmission plan for the CREZ facilities, consistent with the statutory mandate in
19 PURA Section 39.904(g)(2). Simply applying the traditional ERCOT Regional
20 Planning Group (RPG) criteria in a mechanical manner to determine which TSPs
21 should build the facilities – *i.e.*, depending on which TSP owns the end point to
22 which the new facilities will connect – would not have given the Commission the
23 ability to develop the best solution to make certain that the CREZ transmission
24 facilities are completed expeditiously and economically. That said, however, I

1 was disappointed in the relative lack of new proposals or concepts among the
2 September 12, 2008 submissions.

3 **Q. PLEASE EXPLAIN.**

4 A. Every entity submitting a CTP proposal plans to operate in exactly the same
5 manner as the existing TSPs in ERCOT – *i.e.*, as regulated utilities that recover
6 their costs through the same TCOS mechanism used by the existing utilities.
7 While this is not surprising for the existing ERCOT utilities (including the Joint
8 Parties and the municipal entities that submitted proposals), I had thought that the
9 new entrants might have developed some innovative new proposals for the
10 Commission to consider, such as merchant lines or similar proposals. Instead, all
11 of the new entrants proposed to use the same regulatory model as the existing
12 TSPs in ERCOT. Given the evident disadvantages associated with awarding CTP
13 facilities to a new entrant, it seems to me that it should be necessary for a new
14 entrant to show how its designation and the addition of new ERCOT utility will
15 be in the public interest. I don't think they have done this.

16 **Q. YOU REFERRED TO THE DISADVANTAGES OF AWARDING CTP**
17 **FACILITIES TO A NEW ENTRANT. PLEASE EXPLAIN.**

18 A. The most obvious disadvantage in the context of the CREZ facilities is the
19 opportunity for delay in getting the facilities built and placed in service. By
20 definition, none of the new entrants have a CCN. As a party who went through
21 the process of obtaining a new CCN under PURA in 1999, Sharyland appreciates
22 how intense these kind of proceedings can be. I assume the new entrants plan to
23 argue that if they are selected to build CTP facilities in this proceeding, all the
24 issues related to their qualifications will have been decided in this case, but I do

1 not think you can assume that parties will not raise such issues in the subsequent
2 CCN proceedings to construct the transmission lines. Also, with the recent
3 decision of the Travis County District Court in the Electric Transmission Texas
4 (ETT) proceeding, award of CTP facilities to a new entrant clearly runs the risk of
5 a successful court appeal challenging the Commission's authority to make such an
6 award to an entity that does not already have a service area. In either event, legal
7 challenges could delay the TSP's ability to complete the CREZ facilities.

8 **Q. WHAT DO YOU SEE AS THE BENEFIT OF BRINGING IN A NEW**
9 **ENTRANT TO CONSTRUCT THE CREZ FACILITIES?**

10 A. Given the CTP proposals they filed, I don't see any benefit. To be sure, some of
11 the new entrants (Cross Texas and Tejas Transmission in particular) submitted
12 rate proposals that they claim will benefit ERCOT ratepayers and potentially
13 result in a lower cost. As discussed below, however, these proposals are deeply
14 flawed and appear to be designed to benefit the TSP rather than ratepayers. In
15 other words, the new entrants are not proposing to add any value in return for
16 participating in the CREZ transmission build out, but instead are simply asking
17 that they be allowed to share in the large investment that will need to be made to
18 deliver wind energy from remote areas of West Texas and the Panhandle to load
19 centers in ERCOT.

20 **Q. HOW WOULD APPROVAL OF THE JOINT PARTIES' PROPOSAL**
21 **ADVANCE THE COMMISSION'S GOALS AS COMPARED TO THE**
22 **NEW ENTRANTS?**

23 A. The Joint Parties have been involved in the CREZ process for nearly two years,
24 including participating in the original CREZ proceeding in Docket No. 33672 and
25 in the related ERCOT activities such as the preparation of the Transmission

1 Optimization Study filed in that docket. As a result, the Joint Parties were well
2 prepared to move expeditiously to develop a plan for expeditious and cost-
3 effective coordinated construction of the CREZ facilities among themselves. This
4 plan, the Joint Development Plan, was submitted along with the Joint Parties'
5 September 12 Joint CTP Proposal. Due to existing relationships and operations
6 that are already in place, the Joint Parties are ready to start the process of
7 preparing their CCN applications and designing the specific CTP facilities as soon
8 as they are designated.

9 As an example, Sharyland has been working on a plan to construct CREZ
10 facilities in the Panhandle and South Plains region since early 2007, when we
11 developed the proposed Panhandle Loop Project, which was presented to the
12 Commission in Docket No. 33672. We not only participated in the CREZ
13 proceeding, but we also were active in the related ERCOT proceedings. As a
14 result, Sharyland has considerable familiarity with the construction and
15 engineering issues associated with building facilities in the region and is prepared
16 to move very quickly if we are designated to construct the facilities we are
17 requesting. The other Joint Parties are in a similar position with respect to the
18 facilities they are proposing to build.

19 The Joint Parties are not new to ERCOT or to the Commission. The
20 Commission has regulated them in the past and is fully familiar with their
21 capabilities and resources. As important, the Joint Parties are fully familiar with
22 the Commission's expectations of regulated utilities.

1 **Q. HOW DOES THIS COMPARE WITH THE NEW ENTRANTS?**

2 A. Three of the four new entrants did not become involved in the TSP selection
3 process until recently. Although Lone Star has been involved throughout the
4 entire CREZ process, neither Cross Texas nor Tejas Transmission surfaced until
5 April of this year. (An affiliate of Tejas, Brown & Babcock, participated as a
6 wind generator in Docket No. 33672). Isolux came in even later, filing its initial
7 statement of interest on July 31 of this year. The new entrants are all shell
8 companies at this stage and will necessarily have to form new organizations and
9 staff them in order to get to the same place that the Joint Parties are today. This
10 raises the risk of additional delay and cost.

11 **Q. IS THERE A VALUE IN APPROVING NEW ENTRANTS IN ORDER TO**
12 **PROMOTE COMPETITION AMONG INCUMBENT TSPS?**

13 A. There could be in the abstract, but as noted above, I do not see how the proposals
14 filed on September 12 offer anything new or valuable to the Commission. As the
15 Joint Parties' witness Pat Wood testified in his Direct Testimony, simply
16 approving a new entrant for the sake of having a new entrant accomplishes
17 nothing.

18 It should also be pointed out that assigning large transmission projects to
19 new entrants that have had no role in developing them can have a negative effect
20 on the development of such projects by existing TSPs. Existing TSPs are always
21 looking for ways to improve the reliability of the transmission grid. Projects
22 typically begin in the engineering department of a TSP, which conducts the
23 preliminary studies in order to determine whether an investment in additional
24 facilities is necessary and economic. Once the company decides it is worth

1 pursuing, the project will be presented to ERCOT and if warranted may be
2 reviewed through the RPG process. If a company spends the time and resources
3 to develop a project only to find that it is reassigned to another entity that invested
4 no effort in developing the project, that may disincen TSPs from pursuing such
5 projects. Unless there is a net positive benefit in assigning a particular project to
6 an entity that had nothing to do with its development, I believe the project should
7 be assigned to the entity that developed it.

8 **Q. WOULD APPROVAL OF THE JOINT PARTIES' PROPOSAL BE**
9 **CONSISTENT WITH THE OBJECTIVES OF THE TSP SELECTION**
10 **RULE?**

11 A. Yes, I believe so. The proposal does not simply apply the traditional RPG criteria
12 but is the product of extensive negotiations among the Joint Parties to develop a
13 comprehensive plan. In this respect, it reflects a clear opening up of the
14 traditional process for determining which TSPs will be assigned the responsibility
15 to construct transmission facilities. There are many instances in which the Joint
16 Parties agreed to give up rights to construct a particular line that they may have
17 had under the RPG criteria in return for obtaining agreement to an overall plan.
18 The Joint Parties also compromised on their original objectives. For example,
19 Sharyland proposed to construct all of the Panhandle facilities as part of its
20 original Panhandle Loop proposal in Docket No. 33672, at a cost of \$1.6 billion.
21 Sharyland settled for substantially less than this as part of the Joint Parties'
22 proposal because Sharyland believed that was the best way to reach an
23 expeditious resolution of the proceeding and commence construction of the CREZ

1 facilities. All of the other Joint Parties made similar compromises to reach an
2 overall plan.

3 **Q. YOU HAVE ADDRESSED THE NEW ENTRANT CTP FILINGS. WHAT**
4 **IS YOUR REACTION TO THE MUNICIPAL ENTITY FILINGS?**

5 A. The municipal entities – City Public Service (CPS), the City of Garland
6 (Garland), and the Texas Municipal Power Association – obviously are very
7 different from the new entrants. Like the Joint Parties, they have operated in
8 ERCOT for many years and have existing resources and staff. They also have
9 CCNs. What struck me about the municipal entities' September 12 filings,
10 however, were their proposals to construct transmission outside of their service
11 areas without the necessity to file CCN applications with the Commission. In
12 other words, the cities themselves will make the decisions on the routing of the
13 lines, not the Commission. Other witnesses will discuss this in more detail, but
14 this seems to me a recipe for controversy and litigation that has the potential to
15 delay completion of the CREZ facilities. It also raises questions about the unique
16 status of municipalities under PURA, which have been exempt from most
17 regulation because of the fact that they are political bodies and are accountable to
18 their constituents.

19 **Q. ARE THERE OTHER ISSUES WITH RESPECT TO THE MUNICIPAL**
20 **ENTITY PROPOSALS?**

21 A. Yes. I believe that questions may be raised with respect to the authority of TMPA
22 to construct transmission facilities outside its municipal boundaries. The
23 concurrent ordinances of the member cities of TMPA contain provisions that state
24 that the boundaries of TMPA are the territories and corporate limits of the four

1 cities, pursuant to Section 163.057(2) of the Utilities Code. This is reflected in an
2 RFI response from TMPA, attached to my testimony as Exhibit RGG-1R. As
3 shown on the map attached to Pat Wood's Responsive Testimony as Exhibit PW-
4 1R, the closest that any of the facilities that TMPA is proposing to build come to
5 the boundaries of the four cities is 150 miles. Also, as TMPA states in another
6 RFI response attached as Exhibit RGG-2R, Section 163.060 of the Utilities Code
7 contains a prohibition against TMPA engaging in "any utility business other than
8 the generation, transmission, and sale or exchange of electric energy to . . . a
9 participating public entity; or . . . a private entity that owns jointly with the agency
10 an electric generating facility in this state." On its face, this provision seems to
11 exclude the type of activity that TMPA proposes in its CTP filing. TMPA itself
12 acknowledges in its RFI response that the provision, "taken literally, implies that
13 TMPA may not own a transmission line that provides service to anyone else," but
14 then explains why it believes that this provision is not applicable to its proposal
15 here. I am not an attorney so I cannot evaluate TMPA's arguments why the
16 prohibition in Section 163.060 should not apply to its proposal here, but it seems
17 clear to me that there is certainly the possibility of litigation concerning TMPA's
18 authority to construct the CTP facilities it proposes to build.

19 **Q. HAS THERE BEEN LITIGATION INVOLVING TMPA AND ITS**
20 **MEMBER CITIES IN THE PAST?**

21 **A.** Yes, there has been ongoing litigation between the City of Bryan and TMPA
22 relating to transmission cost of service issues for several years. The City of Bryan
23 also filed a lawsuit on September 12, 2008, challenging the bond resolution that
24 was approved by the TMPA Board of Directors on the preceding date, which was

1 attached to TMPA's CTP Proposal as Attachment E (Bates pp. 29-141).
2 According to an RFI response by TMPA attached as Exhibit RGG-3R, this
3 lawsuit was non-suited by the City of Bryan. However, a recent news report
4 (attached as Exhibit RGG-4R) indicates that the litigation has now moved to
5 Travis County.

6 **Q. HAS THE TMPA BOARD OF DIRECTORS APPROVED THE CTP**
7 **PROPOSAL SUBMITTED BY TMPA?**

8 A. No. In its response to JP-TMPA 3-12, attached as Exhibit RGG-5R, TMPA stated
9 that TMPA "will make a decision whether TMPA should be committed before a
10 final decision is made by the PUCT in this docket," and that "TMPA will be
11 committed to construct the CTP facilities" after the Commission makes a final
12 decision in this proceeding. Additional action will be necessary by the Board to
13 approve capital budgets and financing for the projects if they are awarded to
14 TMPA.

15 **Q. GIVEN THE MAGNITUDE OF THE INVESTMENT IN CREZ**
16 **FACILITIES, DO YOU BELIEVE THERE IS A BENEFIT IN**
17 **SPREADING THE INVESTMENT AMONG SEVERAL ENTITIES IN**
18 **ORDER TO MINIMIZE THE RISK THAT ONE COMPANY MAY BITE**
19 **OFF MORE THAN IT CAN CHEW?**

20 A. I understand that argument in the abstract. I do not believe that the Joint Parties'
21 proposal runs that risk. The proposal involves eight different utilities, and
22 includes both public and investor-owned entities. All are financially well
23 qualified and have reputations to maintain before the Commission. As existing
24 utilities holding CCNs, they have a strong incentive to complete construction of
25 the CREZ facilities expeditiously and in a cost-effective manner. If they should

1 fail to complete construction, they cannot just walk away and go somewhere else
2 to develop a new project.

IV. SPECIFIC CRITICISMS OF CTP PROPOSALS

3 **Q. YOU MENTIONED EARLIER THAT THE RATE PROPOSALS FILED**
4 **BY CROSS TEXAS AND TEJAS WERE FLAWED. COULD YOU**
5 **PLEASE EXPLAIN?**

6 **A.** Yes. In the case of Cross Texas, the proposal was filed under seal as Highly
7 Sensitive Protected Material; as I am an in-house person, I had to obtain specific
8 consent from Cross Texas to review the proposal. The proposal will be discussed
9 in detail by Sharyland witness Ellen Blumenthal. However, for purposes of my
10 testimony, I will briefly summarize the fundamental defects in the proposal.

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**HIGHLY SENSITIVE PROTECTED MATERIAL
REDACTED
PURSUANT TO PROTECTIVE ORDER
ISSUED IN DOCKET NO. 35665**

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**HIGHLY SENSITIVE PROTECTED MATERIAL
REDACTED
PURSUANT TO PROTECTIVE ORDER
ISSUED IN DOCKET NO. 35665**

Q. WHAT ABOUT THE TEJAS RATE PROPOSAL?

A. Although Tejas touts its rate proposal as offering benefits to the ratepayers, I believe that a careful analysis of the proposal shows that the alleged benefits are illusory. In the first place, it appears that Tejas is seeking the equivalent of a preliminary rate order from the Commission in order to facilitate financing of any CTP facilities it may be awarded. I am not aware of any instance in which the Commission has previously issued such a rate order. Tejas cites the unbundled cost of service (UCOS) proceedings held before the Commission in 2000 and 2001 in order to implement Senate Bill No. 7, the electric restructuring bill, as a precedent for its proposal. CTP Proposal at p. 60 (Bates p. 0099). Under Senate Bill No. 7, the Commission had to adopt new transmission and distribution rates for the unbundled utilities by January 1, 2002. It instituted a series of proceedings to adopt rates for all utilities (including Sharyland). As part of the UCOS proceedings, the Commission opened a separate docket to consider generic ROE's and capital structures as well as rate design for all the utilities that were unbundling. This proceeding, which was necessitated by the restructuring

1 legislation, is far different from Tejas' request that the Commission approve
2 preliminary rate principles for Tejas so that it can finance its CTP facilities.

3 **Q. ARE THERE ARE OTHER CONCERNS WITH THE TEJAS RATE**
4 **PROPOSAL?**

5 A. Yes, the purported savings arising from its proposed 9.62% ROE are offset by
6 Tejas' use of an unrealistic depreciation period of 30 years. As explained by Mr.
7 Blumenthal in her testimony, typical depreciation periods for transmission assets
8 for ERCOT utilities are in the 40-year plus range. By combining a shortened
9 depreciation period with its 9.62% ROE, Tejas generates a higher revenue
10 requirement during the early years of the project, thus resulting in extra costs –
11 not savings – to ERCOT ratepayers. Also, the proposed 9.62% ROE would
12 apparently remain in effect even if ROEs approved by the Commission for other
13 utilities at the time were lower. In short, the Tejas rate proposal offers no savings
14 to ratepayers but appears to benefit Tejas.

15 **Q. DOES TEJAS CLAIM THAT ITS PROPOSAL WILL RESULT IN**
16 **FURTHER COST SAVINGS TO CUSTOMERS?**

17 A. Yes. In its CTP Filing, Tejas stated that "its proposal could result in annual T-
18 COS that are approximately 8-10% lower than what ratepayers are currently
19 charged for existing facilities based on comparing costs under Tejas' proposal to
20 costs customers would bear if the facilities were constructed by the incumbents
21 under their existing rates or public commitments." Tejas CTP Proposal at p. 61
22 (Bates p. 0100). In response to an RFI request from the Joint Parties, Tejas
23 provided an analysis that provides the basis for this assertion. Ms. Blumenthal
24 will discuss this analysis in detail, but suffice it to say that the analysis contains

1 numerous errors. A principal flaw in the analysis is that it erroneously assumes
2 that all transmission costs increase proportionately as transmission plant is added.
3 Since the existing TSPs already have the overhead in place to construct and
4 operate the CREZ facilities (such as Administrative & General expenses) and any
5 additional overhead necessary to build the facilities will be incremental, the Tejas
6 analysis essentially duplicates the costs in the calculation for the incumbents. The
7 result of this erroneous assumption is to grossly inflate the incumbents' costs
8 compared to Tejas.

V. OTHER WITNESSES

9 **Q. WHAT OTHER RESPONSIVE TESTIMONY WILL SHARYLAND BE**
10 **PRESENTING?**

11 A. Three witnesses, including Pat Wood, John Reed, and James Dyer, are presenting
12 testimony on behalf of all of the Joint Parties. Witnesses presented by Sharyland
13 include, in addition to myself, the following: Mr. Donald Mundy, Black &
14 Veatch, will discuss the construction schedules and in-service dates presented by
15 several of the parties who submitted CTP proposals; Mr. Mark Caskey, Vice
16 President of Operations for Sharyland, will discuss the qualifications of the new
17 entrants to construct and operate CTP facilities as well as their lack of a
18 coordinated plan; Ms. Ellen Blumenthal, GDS Associates, will discuss the rate
19 proposals of Cross Texas and Tejas as well as Garland's methodology for
20 calculating TCOS; and Mr. Bertram Solomon, also of GDS, will address the
21 financial problems that have been experienced by the parent company of Tejas,
22 Babcock & Brown, in recent months.

VI. CONCLUSION

1 **Q. MR. GOODLET, DOES THIS CONCLUDE YOUR RESPONSIVE**
2 **TESTIMONY?**

3 **A. Yes, it does.**

EXHIBIT RGG-1R

TMPA's RFI Response to JP-TMPA 1-7

PUC DOCKET NO. 35665

**TMPA'S RESPONSES TO JOINT PARTIES'
FIRST REQUEST FOR INFORMATION**

JP-TMPA 1-7. Please provide the city charter or ordinance or similar document authorized or approved by the cities that own TMPA or their voters that defines the scope, purpose and authority of TMPA's electric utility activity.

RESPONSE:

TMPA is not owned by the participating municipalities. TMPA is an independent public entity organized and operating under the provisions of Subchapter C of Chapter 163 of Texas Utilities Code. Attached are copies of the concurrent ordinances for the establishment of TMPA. Subsequent to the formation of TMPA, the legislature enacted Chapter 35 of PURA. TMPA operates as a transmission provider under Chapter 35 of PURA.

Prepared by: Carl Shahady
Sponsored by: Eric Schroeder

CERTIFICATE OF OFFICIAL WRITTEN INSTRUMENT


STATE OF TEXAS)(
COUNTY OF BRAZOS)(

I, Mary Lynne Stratta, City Secretary of the City of Bryan, Texas, have legal custody of the written instrument(s) of record referred to herein, which is available for inspection, and I do hereby certify that the copy of such written instrument(s) of record attached to this Certificate is a true and correct copy of the original as same appears in the records of this office. The written instrument(s) or record(s) referred to herein and attached to this Certificate is described as follows:

Ordinance No. 183

In testimony whereof, I subscribed my name hereto officially under the corporate seal of the City of Bryan, Texas, on this the 24th day of February, 2004.

(SEAL)


Mary Lynne Stratta
City Secretary
CITY OF BRYAN, TEXAS

AN ORDINANCE BY THE GOVERNING BODY OF THE CITY OF BRYAN, TEXAS, RELATING TO THE CREATION OF A MUNICIPAL POWER AGENCY UNDER THE PROVISIONS OF ARTICLE 1435a, V. A. T. C. S.; CREATING SUCH AGENCY; DEFINING ITS BOUNDARIES; MAKING PROVISION FOR A BOARD OF DIRECTORS AND THEIR METHOD OF SELECTION; PRESCRIBING A NAME FOR SUCH AGENCY; ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE SUBJECT AND PURPOSE OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

WHEREAS, under the provisions of S. B. 371, as adopted by the 64th Session of the Texas Legislature, Regular Session, 1975, two or more qualifying public entities are empowered to create a joint powers agency (to be known as a Municipal Power Agency) as a separate municipal corporation, a political subdivision of the State and a body politic and corporate; and

WHEREAS, the incorporated municipalities of Texas known as the City of Bryan, City of Denton, City of Garland, and the City of Greenville are each an agency or subdivision of the State of Texas so that each is a "public entity" within the meaning of that term as defined in Section 2, of Article 1435a, V. A. T. C. S.; and

WHEREAS, each of the aforesaid public entities is one which has the authority to engage in the generation of electric energy for sale to the public (by virtue of the provisions of Title 28, Revised Civil Statutes of Texas, 1925, as amended) and on the 8th day of May, 1975 (the effective date of the Senate Bill hereinabove mentioned) were engaged in the generation of and sale of electric energy to the public; and

WHEREAS, this governing body has heretofore caused notice of its intention to adopt this ordinance (to provide for the creation of a Municipal Power Agency) to be published once a week for two consecutive weeks, the date of the first publication to be at least fourteen (14) days prior to the date set for the passage of this concurrent ordinance; and

WHEREAS, prior to this date (the date established in this aforesaid notice as the date for the passage of this ordinance), no petition signed by 10% of the qualified electors of this City has been submitted to any official of this City requesting that a referendum election be called on the question of whether this ordinance should be passed and adopted; and

WHEREAS, it is now proper for this governing body to proceed with the passage of this ordinance; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN, TEXAS:

SECTION 1. The recitals contained in the preamble hereof are found to be true and are adopted as findings of fact by this governing body.

SECTION 2. That this governing body, in conjunction with the governing body of the remaining public entities mentioned in the preamble hereof, do by this concurrent ordinance hereby establish and create a Municipal Power Agency, without taxing power, and such Agency:

- (a) shall be known as the "Texas Municipal Power Agency";
- (b) shall have boundaries which include the territory within the corporate limits of the Cities of Bryan, Denton, Garland and Greenville; and
- (c) shall be governed by a Board of Directors consisting of eight (8) persons, who shall serve by places.

SECTION 3. The initial term of office of the Directors (calculated from the date of the passage of this ordinance) and the governing body of the particular public entity who may appoint such director to fill each place, shall be as follows:

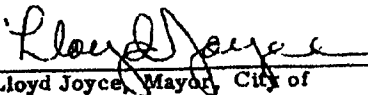
<u>Place Number</u>	<u>Initial Term</u>	<u>Appointing Public Entity</u>
1	One year	City of Bryan
2	Two years	City of Bryan
3	One year	City of Denton
4	Two years	City of Denton
5	One year	City of Garland
6	Two years	City of Garland
7	One year	City of Greenville
8	Two years	City of Greenville

Successors in office (for each place) shall be appointed by the governing body of the public entity appointing the initial director for such place for a term of two years. Vacancies in office in each place shall be filled for the unexpired term by the governing body of the public entity which originally filled such position.


SECTION 4. In accordance with Section 4a of Article 1435a, V. A. T. C. S. the right is reserved by this governing body to join with the other public entities specified in Section 2 hereof to provide for the re-creation of such power agency by the addition and deletion, either or both, of a public entity so long as there is no impairment of obligation of any existing obligation of the Agency.

SECTION 5. That the public importance of this measure and the fact that it is to the best interest of the City to create a Municipal Power Agency under the provisions of Article 1435a, V. A. T. C. S., at the earliest possible date constitutes and creates an emergency and an urgent public necessity, requiring that any rule providing for ordinances to be read more than one time or at more than one meeting of the City Council be suspended, and requiring that this ordinance be passed and take effect as an emergency measure, and any such rules or provisions are accordingly suspended and this ordinance is passed as an emergency measure, and shall take effect and be in full force from and after its passage.

PASSED AND APPROVED this the 18th day of July, 1975.


Lloyd Joyce, Mayor, City of Bryan, Texas

ATTEST:


Joe E. Evans, City Secretary

APPROVED AS TO FORM:


J. P. Roberts, City Attorney

CERTIFICATE OF CITY SECRETARY

THE STATE OF TEXAS

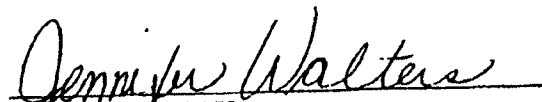
COUNTY OF DENTON

CITY OF DENTON

I, the undersigned City Secretary of the City of Denton, Texas, (the "City") DO HEREBY CERTIFY that according to the records of the City of which I am custodian, that:

the attached is a true and accurate copy of Ordinance No. 75-22 as approved by the City of Denton City Council on July 18, 1975.

TO CERTIFY WHICH, witness my official signature and the seal of said City, this the 23rd day of February, 2004.


CITY SECRETARY
CITY OF DENTON, TEXAS

NO. 75-22

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF DENTON, TEXAS, RELATING TO THE CREATION OF A MUNICIPAL POWER AGENCY UNDER THE PROVISIONS OF ARTICLE 1435a, V.A.T.C.S; CREATING SUCH AGENCY; DEFINING ITS BOUNDARIES; MAKING PROVISION FOR A BOARD OF DIRECTORS AND THEIR METHOD OF SELECTION; PRESCRIBING A NAME FOR SUCH AGENCY; ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE SUBJECT AND PURPOSE OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

WHEREAS, under the provisions of S.B. 371, as adopted by the 64th Session of the Texas Legislature, Regular Session, 1975, two or more qualifying public entities are empowered to create a joint powers agency (to be known as a Municipal Power Agency) as a separate municipal corporation, a political subdivision of the State and a body politic and corporate; and

WHEREAS, the incorporated municipalities of Texas known as the City of Bryan, City of Denton, City of Garland and the City of Greenville are each an agency or subdivision of the State of Texas so that each is a "public entity" within the meaning of that term as defined in Section 2 of Article 1435a, V.A.T.C.S.; and

WHEREAS, each of the aforesaid public entities is one which has the authority to engage in the generation of electric energy for sale to the public (by virtue of the provisions of Title 28, Revised Civil Statutes of Texas, 1925, as amended) and on the 8th day of May, 1975 (the effective date of the Senate Bill hereinabove mentioned) were engaged in the generation of and sale of electric energy to the public; and

WHEREAS, this governing body has heretofore caused notice of its intention to adopt this ordinance (to provide for the creation of a Municipal Power Agency) to be published once a week for two consecutive weeks, the date of the first publication to be at least fourteen (14) days prior to the date set for the passage of this current ordinance; and

WHEREAS, prior to this date (the date established in this aforesaid notice as the date for the passage of this ordinance), no petition signed by ten percent (10%) of the qualified electors of this

City has been submitted to any official of this City requesting that a referendum election be called on the question of whether this ordinance should be passed and adopted; and

WHEREAS, it is now proper for this governing body to proceed with the passage of this ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DENTON, TEXAS, HEREBY ORDAINS:

SECTION I.

The recitals contained in the preamble hereof are found to be true and are adopted as findings of fact by this governing body.

SECTION II.

That this governing body, in conjunction with the governing body of the remaining public entities mentioned in the preamble hereof, do by this concurrent ordinance hereby establish and create a Municipal Power Agency, without taxing power, and such Agency:

(a) shall be known as the "Texas Municipal Power Agency";

and

(b) shall have boundaries which include the territory within the corporate limits of the Cities of Bryan, Denton, Garland and Greenville; and

(c) shall be governed by a Board of Directors consisting of eight (8) persons, who shall serve by places.

SECTION III.

The initial term of office of the Directors (calculated from the date of the passage of this ordinance) and the governing body of the particular public entity who may appoint such Director to fill each place, shall be as follows:

<u>PLACE NUMBER</u>	<u>INITIAL TERM</u>	<u>APPOINTING PUBLIC ENTITY</u>
1	One Year	City of Bryan
2	Two Years	City of Bryan
3	One Year	City of Denton
4	Two Years	City of Denton
5	One Year	City of Garland
6	Two Years	City of Garland
7	One Year	City of Greenville
8	Two Years	City of Greenville

Successors in office (for each place) shall be appointed by the governing body of the public entity appointing the initial director for such place for a term of two years. Vacancies in office in each place shall be filled for the unexpired term by the governing body of the public entity which originally filled such position.

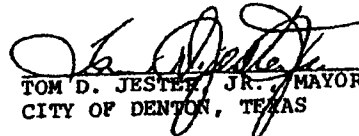
SECTION IV.

In accordance with Section 4a of Article 1435a, V.A.T.C.S. the right is reserved by this governing body to join with other public entities specified in Section II hereof to provide for the re-creation of such power agency by the addition and deletion, either or both, of a public entity so long as there is no impairment of obligation of any existing obligation of the Agency.


SECTION V.

That the public importance of this measure and the fact that it is to the best interest of the City to create a Municipal Power Agency under the provisions of Article 1435a, V.A.T.C.S., at the earliest possible date constitutes and creates an emergency and an urgent public necessity, requiring that any rule providing for ordinances to be read more than one time or at more than one meeting of the City Council be suspended, and requiring that this ordinance be passed and take effect as an emergency measure, and any such rules or provisions are accordingly suspended and this ordinance is passed as an emergency measure, and shall take effect and be in full force from and after its passage.

PASSED AND APPROVED this the 18th day of July, A. D. 1975.


TOM D. JESTER, JR., MAYOR
CITY OF DENTON, TEXAS

ATTEST:


BROOKS HOLT, CITY SECRETARY
CITY OF DENTON, TEXAS

APPROVED AS TO LEGAL FORM:


PAUL C. ISHAM, CITY ATTORNEY
CITY OF DENTON, TEXAS


CERTIFIED COPY OF RECORD

STATE OF TEXAS

COUNTY OF DALLAS

I, the undersigned, City Secretary of the City of Garland, Texas, a governmental subdivision of the State of Texas, in the performance of the functions of my office, hereby certify that the attached record is a full, true and correct copy of Ordinance No. 2589 of the City of Garland as same appears of record in my office and that I am the lawful possessor and have legal custody of said record.

WITNESS my hand and Seal of said City of Garland, Texas, at my office in said City, County and State aforesaid, this the 24th day of February, 2004.


Ranette Larsen
City Secretary
City of Garland, Texas

ORDINANCE NO. 2589

AN ORDINANCE BY THE GOVERNING BODY OF THE CITY OF GARLAND, TEXAS, RELATING TO THE CREATION OF A PUBLIC POWER AGENCY UNDER THE PROVISIONS OF ARTICLE 1435a, V.A.T.C.S.; CREATING SUCH AGENCY; DEFINING ITS BOUNDARIES; MAKING PROVISION FOR A BOARD OF DIRECTORS AND THEIR METHOD OF SELECTION; PRESCRIBING A NAME FOR SUCH AGENCY; ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE SUBJECT AND PURPOSE OF THIS ORDINANCE; AND DECLARING AN EMERGENCY.

WHEREAS, under the provisions of S.B. 371, as adopted by the 64th Session of the Texas Legislature, Regular Session, 1975, two or more qualifying public entities are empowered to create a joint powers agency (to be known as a Municipal Power Agency) as a separate municipal corporation, a political subdivision of the State and a body politic and corporate; and

WHEREAS, the incorporated municipalities of Texas known as the City of Bryan, City of Denton, City of Garland and the City of Greenville are each an agency or subdivision of the State of Texas so that each is a "public entity" within the meaning of that term as defined in Section 2 of Article 1435a, V.A.T.C.S.; and

WHEREAS, each of the aforesaid public entities is one which has the authority to engage in the generation of electric energy for sale to the public (by virtue of the provisions of Title 28, Revised Civil Statutes of Texas, 1925, as amended) and on the 8th day of May, 1975 (the effective date of the Senate Bill hereinabove mentioned) were engaged in the generation of and sale of electric energy to the public; and

WHEREAS, this governing body has heretofore caused notice of its intention to adopt this ordinance (to provide for the creation of a Municipal Power Agency) to be published once a week for two consecutive weeks, the date of the first publication to be at least fourteen (14) days prior to the date set for the passage of this concurrent ordinance; and

WHEREAS, prior to this date (the date established in this aforesaid notice as the date for the passage of this ordinance), no petition signed by 10% of the qualified electors of this City has been submitted to any official of this City requesting that a referendum election be called on the question of whether this ordinance should be passed and adopted; and

WHEREAS, it is now proper for this governing body to proceed with the passage of this ordinance; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARLAND, TEXAS:

SECTION 1: The recitals contained in the preamble hereof are found to be true and are adopted as findings of fact by this governing body.

SECTION 2: That this governing body, in conjunction with the governing body of the remaining public entities mentioned in the preamble hereof, do by this concurrent ordinance hereby establish and create a Municipal Power Agency, without taxing power, and such Agency:

(a) shall be known as the "Texas Municipal Power Agency;"
and

(b) shall have boundaries which include the territory within the corporate limits of the Cities of Bryan, Denton, Garland and Greenville; and

(c) shall be governed by a Board of Directors consisting of eight (8) persons, who shall serve by places.

SECTION 3: The initial term of office of the Directors (calculated from the date of the passage of this ordinance) and the governing body of the particular public entity who may appoint such director to fill each place, shall be as follows:

<u>Place Number</u>	<u>Initial Term</u>	<u>Appointing Public Entity</u>
1	One year	City of Bryan
2	Two years	City of Bryan
3	One year	City of Denton
4	Two years	City of Denton
5	One year	City of Garland
6	Two years	City of Garland
7	One year	City of Greenville
8	Two years	City of Greenville

Successors in office (for each place) shall be appointed by the governing body of the public entity appointing the initial director for such place for a term of two years. Vacancies in office in each place shall be filled for the unexpired term by the governing body of the public entity which originally filled such position.

SECTION 4: In accordance with Section 4a of Article 1435a, V.A.T.C.S. the right is reserved by this governing body to join with the other public entities specified in Section 2 hereof to provide for the re-creation of such power agency by the addition and deletion, either or both, of a public entity so long as there is no impairment of obligation of any existing obligation of the Agency.

SECTION 5: That the public importance of this measure and the fact that it is to the best interest of the City to create a Municipal Power Agency under the provisions of Article 1435a, V.A.T.C.S., at the earliest possible date constitutes and creates an emergency and an urgent public necessity, requiring that any rule providing for ordinances to be read more than one time or at more than one meeting of the City Council be suspended, and requiring that this ordinance be passed and take effect as an emergency measure, and any such rules or provisions are accordingly suspended and this ordinance is passed as an emergency measure, and shall take effect and be in full force from and after its passage.

PASSED AND APPROVED this the 18th day of July, 1975.

THE CITY OF GARLAND, TEXAS

Don Raines
Mayor

ATTEST:

Alta Watson
City Secretary


The seal of the City of Garland, Texas, is circular. It features a central five-pointed star within a square frame. The word "GARLAND" is written in a semi-circle above the star, and "TEXAS" is written in a semi-circle below it. The entire seal is enclosed within a double-lined circular border.

CERTIFICATE OF CITY SECRETARY

THE STATE OF TEXAS)
COUNTY OF HUNT)
CITY OF GREENVILLE)

I, Debra Newell, the duly appointed, qualified and acting City Secretary in and for the City of Greenville, Texas, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Texas, do certify that the above, foregoing and attached is a true, accurate and correct copy of Ordinance 1462 from the July 18, 1975 City Council meeting as passed and approved by the members of the City Council of the City of Greenville, Texas on July 18, 1975.

WITNESS MY HAND AND SEAL OF SAID CITY, this the 24th day of February, 2004.



Debra Newell, City Secretary
in and for the City of Greenville, Texas

ORDINANCE NO. 1462

AN ORDINANCE BY THE GOVERNING BODY OF THE CITY OF GREENVILLE, TEXAS, RELATING TO THE CREATION OF A MUNICIPAL POWER AGENCY UNDER THE PROVISIONS OF ARTICLE 1435a, V.A.T.C.S.; CREATING SUCH AGENCY; DEFINING ITS BOUNDARIES; MAKING PROVISION FOR A BOARD OF DIRECTORS AND THEIR METHOD OF SELECTION; PRESCRIBING A NAME FOR SUCH AGENCY; ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE SUBJECT AND PURPOSE OF THIS ORDINANCE; AND DECLARING AN EMERGENCY

WHEREAS, under the provisions of S. B. 371, as adopted by the 64th Session of the Texas Legislature, Regular Session, 1975, two or more qualifying public entities are empowered to create a joint powers agency (to be known as a Municipal Power Agency) as a separate municipal corporation, a political subdivision of the State and a body politic and corporate; and,

WHEREAS, the incorporated municipalities of Texas known as the City of Bryan, City of Denton, City of Garland and the City of Greenville are each an agency or subdivision of the State of Texas so that each is a "public entity" within the meaning of that term as defined in Section 2 of Article 1435a, V.A.T.C.S.; and,

WHEREAS, each of the aforesaid public entities is one which has the authority to engage in the generation of electric energy for sale to the public (by virtue of the provisions of Title 28, Revised Civil Statutes of Texas, 1925, as amended) and on the 8th day of May, 1975 (the effective date of the Senate Bill hereinabove mentioned) were engaged in the generation of and sale of electric energy to the public; and,

WHEREAS, this governing body has heretofore caused notice of its intention to adopt this ordinance (to provide for the creation of a Municipal Power Agency) to be published once a week for two consecutive weeks, the date of the first publication to be at least fourteen (14) days prior to the date set for the passage of this concurrent ordinance; and,

WHEREAS, prior to this date (the date established in this aforesaid notice as the date for the passage of this ordinance), no petition signed by 10% of the qualified electors of this City has been submitted to any official of this City requesting that a referendum election be called on the question of whether this ordinance should be passed and adopted; and,

WHEREAS, it is now proper for this governing body to proceed with the passage of this ordinance; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE, TEXAS:

SECTION 1: The recitals contained in the preamble hereof are found to be true and are adopted as findings of fact by this governing body.

SECTION 2: That this governing body, in conjunction with the governing body of the remaining public entities mentioned in the preamble hereof, do by this concurrent ordinance hereby establish and create a Municipal Power Agency, without taxing power, and such Agency:

- (a) shall be known as the "Texas Municipal Power Agency"; and,
- (b) shall have boundaries which include the territory within the corporate limits of the Cities of Bryan, Denton, Garland and Greenville; and,
- (c) shall be governed by a Board of Directors consisting of eight (8) persons, who shall serve by places.

SECTION 3: The initial term of office of the Directors (calculated from the date of the passage of this ordinance) and the governing body of the particular public entity who may appoint such director to fill each place, shall be as follows:

<u>Place Number</u>	<u>Initial Term</u>	<u>Appointing Public Entity</u>
1	One year	City of Bryan
2	Two years	City of Bryan
3	One year	City of Denton
4	Two years	City of Denton
5	One year	City of Garland
6	Two years	City of Garland
7	One year	City of Greenville
8	Two years	City of Greenville

Successors in office (for each place) shall be appointed by the governing body of the public entity appointing the initial director for such place for a term of two years. Vacancies in office in each place shall be filled for the unexpired term by the governing body of the public entity which originally filled such position.

SECTION 4: In accordance with Section 4a of Article 1435a, V.A.T.C.S. the right is reserved by this governing body to join with the other public entities specified in Section 2 hereof to provide for the re-creation of such power agency by the addition and deletion, either or both, of a public entity so long as there is no impairment of obligation of any existing obligation of the Agency.

SECTION 5: That the public importance of this measure and the fact that it is to the best interest of the City to create a Municipal Power Agency under the provisions of Article 1435a, V.A.T.C.S., at the earliest possible date constitutes and creates an emergency and an urgent public necessity, requiring that any rule providing for ordinances to be read more than one time or at more than one meeting of the City Council be suspended, and requiring that this ordinance be passed and take effect as an emergency measure, and any such rules or provisions are accordingly suspended and this ordinance is passed as an emergency measure, and shall take effect and be in full force from and after its passage.

PASSED AND APPROVED this the 18th day of July, 1975.



Mayor, City of Greenville, Texas

ATTEST:



City Clerk, City of Greenville, Texas

APPROVED AS TO FORM:



City Attorney, City of Greenville, Texas

(SEAL)

EXHIBIT RGG-2R

TMPA's RFI Response to JP-TMPA 3-6

PUC DOCKET NO. 35665

**TMPA'S RESPONSES TO JOINT PARTIES'
THIRD REQUEST FOR INFORMATION**

JP-TMPA 3-6.

Please state whether Section 163.060 of the Utilities Code applies to TMPA. If not, please explain why not. If so, please explain the legal basis for TMPA's position that it is authorized to construct, own, and operate the CTP Facilities it proposes to build. In particular, state whether TMPA takes the position that its proposal in this proceeding is authorized pursuant to Section 163.060(a)(1) or Section 163.060(a)(2) and explain why.

RESPONSE:

Yes. TMPA's enabling legislation, codified in Subchapter C, Chapter 163, Utilities Code, in Section 163.054(d), delegates to TMPA "all the other powers relating to municipally owned utilities and provided by law to a municipality that owns a public utility." Section 402.001, Local Government Code, authorizes a municipality to, among other things, "purchase, construct, or operate a utility system inside or outside the municipal boundaries," "own land inside or outside its boundaries for these purposes," and "extend the lines of its utility systems outside the municipal boundaries."

The prohibition in Section 163.060, Utilities Code, against TMPA engaging in "any utility business other than the generation, transmission, and sale or exchange of electric energy to...a participating public entity; or...a private entity that owns jointly with the agency an electric generating facility in this state," taken literally, implies that TMPA may not own a transmission line that provides transmission service to anyone else.

This prohibition, which was included in the original version of the enabling legislation in 1975, must be harmonized with the open access regulatory scheme subsequently enacted by the Legislature and implemented by the PUCT. Section 35.004(b), both as adopted in 1995 and as amended in 1999, requires TMPA to provide nondiscriminatory access to its wholesale transmission system. Under this provision, TMPA may not, contrary to a literal reading of Section 163.060, restrict the use of its transmission system to the delivery of Gibbons Creek power to its Member Cities.

Further, under the postage stamp methodology for pricing wholesale transmission service, enacted in 1999 as Section 35.004(d), Utilities Code, each transmission customer in ERCOT, to the extent of its load ratio share, is using TMPA's transmission lines. Under this same methodology,

TMPA is using those same transmission lines, to the extent of its load ratio share, to deliver power to its Member Cities, and this is the case, regardless of where, within ERCOT, TMPA's lines are located.

The CTP Facilities proposed by TMPA are no different. TMPA will use those facilities, to the extent of its load ratio share, to deliver power to its Member Cities. All other transmission customers in ERCOT, to the extent of their load ratio share, will be using those same lines. Section 163.060 is satisfied because the CTP Facilities will be used to deliver power to TMPA's Member Cities. Sections 35.004(b) and 35.004(d) will be satisfied because nondiscriminatory access to the CTP Facilities will be provided to all other transmission customers within ERCOT.

In summary, the prohibition against providing open access transmission service in TMPA's 1975 enabling legislation, must be harmonized with the open access regulatory scheme later enacted by the Legislature. As harmonized, Section 160.060 would not preclude TMPA from owning the proposed CTP Facilities as long as the facilities are used to deliver power to TMPA's Member Cities, notwithstanding that the CTP Facilities are also used to provide nondiscriminatory access to other transmission customers in ERCOT.

Prepared by:
Sponsored by:

Carl Shahady
Eric Schroeder

EXHIBIT RGG-3R

TMPA's RFI Response to JP-TMPA 3-15

PUC DOCKET NO. 35665

**TMPA'S RESPONSES TO JOINT PARTIES'
THIRD REQUEST FOR INFORMATION**

- JP-TMPA 3-15.** Please refer to the TMPA bond resolution set forth in Attachment E to TMPA's CTP Proposal (Resolution 2008-9-1).
- (a) Please state whether Resolution 2008-9-1 has been adopted by the TMPA Board of Directors. If it has not been adopted, please state when TMPA plans to request approval of the Resolution from the Board of Directors.
 - (b) Please state whether the purpose of Resolution 2008-9-1 is to facilitate financing of the CTP Facilities that TMPA is proposing to construct. If that is not the purpose, or if there is another purpose or purposes in addition to facilitating financing the CTP Facilities, please explain.
 - (c) Please state whether the construction of the CTP Facilities that TMPA proposes to construct is authorized under Section 5.15 of Resolution 2008-9-1 and if so explain why.
 - (d) Please state whether the proceeds of the "Series 2008A Bonds" as defined in Resolution 2008-9-1 will be sufficient to fund the CTP Facilities that TMPA proposes to construct as well as the cost of construction of improvements to TMPA's System other than the CTP Facilities (including pollution control and monitoring facilities) and the offsets set forth in Section 2.01(b) of the Resolution.
 - (e) Does Section 2.01(b) of Resolution 2008-9-1 limit the amount of the proceeds of the Series 2008A Bonds used for the construction of improvements to TMPA's System to \$112 million? Please state the cost of the CTP Facilities that TMPA proposes to construct. If the cost of the CTP Facilities TMPA proposes to construct exceeds \$112 million, how does TMPA plan to finance CTP Facilities that are in excess of that amount?
 - (f) Please state the basis on which TMPA has determined that the CTP Facilities TMPA proposes to construct meet the definitions of "Project" and "System" set forth in Section 1.01 of Resolution 2008-9-1. If TMPA contends that the CTP Facilities constitute "System Development and Reliability Expenditures" and/or "Development Projects," please explain why and provide the definitions of those terms under the Power Sales Contract referenced in the definition of "System."

- (g) Is TMPA required to use the proceeds of the Series 2008A Bonds within a specified period of time? If so, please state the applicable time period.
- (h) Please state whether the City of Bryan filed a lawsuit against TMPA on September 12, 2008. If so, did the lawsuit relate to the Board of Directors' adoption of Resolution 2008-9-1? If the lawsuit did not relate to the adoption of Resolution 2008-9-1, please explain the basis for the complaint and provide a copy thereof.
- (i) If the City of Bryan prevails in the lawsuit against TMPA described above, will that affect TMPA's ability to finance the proposed CTP Facilities?
- (j) Will the pendency of the lawsuit described above affect TMPA's ability to finance the CTP Facilities? Please explain.
- (k) What governmental approvals, other than approval by TMPA's Board of Directors, are required for the issuance of the bonds?

RESPONSE:

- (a) Resolution 2008-9-1, was adopted on September 11, 2008. On October 10, 2008, it was replaced by Resolution 2008-10-1.
- (b) Resolution 2008-9-1 has been replaced by Resolution 2008-10-1. Financing CTP Facilities was not the purpose of Resolution 2008-9-1 and is not the purpose of Resolution 2008-10-1. The purpose of Resolution 2008-10-1 is to finance certain pollution abatement equipment and to refinance certain existing debt.
- (c) Nothing is authorized by Section 5.15 of Resolution 2008-9-1 because it has been replaced and superseded by Resolution 2008-10-1. Section 5.15 of Resolution 2008-9-1 was a representation relating to the power TMPA will have while bonds are outstanding. It did not authorize construction of CTP Facilities or anything else. Similarly, Section 5.15 of Resolution 2008-10-1 is a representation relating to the power TMPA will have while bonds are outstanding. It does not authorize construction of CTP Facilities or anything else.
- (d) Financing CTP Facilities is not the purpose of Resolution 2008-10-1 and it will not be used for same.
- (e) Resolution 2008-9-1, was adopted on September 11, 2008. On October 10, 2008, it was replaced by Resolution 2008-10-1. Financing CTP Facilities is not the purpose of Resolution 2008-10-1 and it will not be used for same. The estimated costs of the CREZ projects proposed by

TMPA given on p. 3 of TMPA's CTP Proposal. Future action by the TMPA Board of Directors will be required to provide the financing.

- (f) No such determinations or contentions have been made.
- (g) Under federal tax law, when the bonds are issued, the issuer must have a reasonable expectation that it will expend the proceeds within three years. If, during that three-year period, such reasonable expectations change, i.e., the issuer reasonably expects the period will be longer than three years, then the issuer must restrict the investment yield on the proceeds.
- (h) The answer is yes to both questions.
- (i) Bryan non-suited the September 12 lawsuit.
- (j) See (i) above.
- (k) The Series 2008A Bonds will require approval by the Texas Attorney General's Office.

Prepared by: Carl Shahady
Sponsored by: Eric Schroeder

EXHIBIT RGG-4R

**News Article from Denton Record-Chronicle
(Oct. 25, 2008)**

LOCAL NEWS

[Comments](#) 1 | [Recommend](#) 0

Bryan sues area power agency

City claims Denton power supplier lowered its debt payments to suit agenda

12:43 AM CDT on Saturday, October 25, 2008

By Lowell Brown / Staff Writer

An agency that provides power to Denton and three other Texas cities is facing a legal challenge over its plan to refinance millions of dollars in debt.

The city of Bryan sued the Texas Municipal Power Agency and its other members, Denton, Greenville and Garland, alleging the three North Texas cities conspired to temporarily lower the agency's debt payments to serve their own interests. The four member cities each run their own electric companies but collectively pay the agency's debt.

The suit accuses agency leaders of other ethical lapses, including a violation of the Texas Open Meetings Act, and says their actions could cause electric rates in all four cities to skyrocket after 2018.

Agency leaders deny the claims and say their financial plans are sound. The agency has filed two lawsuits in Travis County asking a judge to validate its plans to sell \$433.5 million in bonds to retire old debt and pay for new equipment. The first suit is tentatively set for trial this winter.

The flurry of litigation is the latest clash between Bryan and the other three cities, following a decade-long dispute over the payment of transmission rates. That case, which is unrelated to the bond lawsuits, is pending in a Grimes County district court.

One attorney for Denton called the Bryan suit a misguided attempt to block the agency's financial plans. The state attorney general must approve the bond sale and won't act while litigation is pending.

"They've thrown everything — including the kitchen sink — at TMPA and the three northern cities," said Michael Copeland, who handles utility issues in the Denton city attorney's office. "It's a rather complicated fact situation, but I doubt that the TMPA board is manipulated by the northern cities."

Pooling operations

The cities jointly manage the agency through an eight-member board of directors. Each city appoints two board members; the board oversees a general manager and an annual budget of about \$200 million.

The agency owns and operates the Gibbons Creek Steam Electric Station from its base in the Grimes County town of Carlos, southeast of Bryan.

The coal-fired plant provides as much as 60 percent of Denton's power. The city buys the remaining electricity needed to serve Denton Municipal Electric customers through the wholesale market.

EXHIBIT RGG-4R

Page 2 of 5

The seeds of the agency were planted in 1960, when the cities commissioned a survey that found they could save money by pooling electric operations. Bryan, Garland and Greenville joined with the Brazos Electric Power Cooperative in 1963 to form the Texas Municipal Power Pool, which Denton joined six years later. In 1975, the four cities voted to create the agency and build the Gibbons Creek plant, taking advantage of a new state law that allowed cities to form joint agencies with most of the same powers as a city-owned utility.

In 1976, the agency entered into identical power sales contracts with each member city that required the cities to pay the agency's bond debt from capital projects, among other responsibilities.

The power plant, built next to a lignite mine, started commercial production in 1983. By 1995, though, the agency was upset with the quality of the lignite and switched its fuel source to Wyoming coal.

The change improved the plant's efficiency and extended its life to at least 2035, said Gary Parsons, the agency's general manager. The agency's debt was set to expire in 2018, along with the cities' power sales contracts. But during planning for the current budget year, agency officials suggested extending the debt payments to more closely match the plant's lifespan — an action Bryan leaders strongly opposed.

Extending debt

Throughout last winter and spring, staff members presented the board with several options for extending the debt but ignored Bryan's request for an independent analysis, according to the Bryan lawsuit. Bryan officials then hired a consultant to perform a separate study, which raised several red flags about the agency's plans.

The study found the debt refinancing would lower the rates the cities pay to the agency from 2008 to 2018 before causing them to "increase sharply" through 2030, when the debt would be paid off. That, in turn, would mean higher rates for customers and higher financial risk for the agency, the lawsuit says, "because other factors such as a carbon tax and increasing rail costs for coal delivery already are expected to increase rates."

Bryan officials also questioned the agency's rationale for extending the debt. The lawsuit alleges that the stated reason, to match the useful life of the coal plant, doesn't apply because much of the existing debt is related to assets that are "fully depreciated, no longer in service, or 'stranded assets' having no useful life."

The agency's plans "add a tremendous amount of debt to this coal-fired plant even though it's projected that in the future the costs of coal are going to rise," said Bryan attorney Lin Hughes of McGinnis, Lochridge & Kilgore LLP in Austin. "The cost of transporting coal is going to rise; the cost of cleaning up coal emissions is going to increase; and when you add all those costs on top of the increased cost of the debt, it's very likely that the plant will become uneconomical to operate. So it will have to be mothballed, and you'll have all these cities paying off this debt and they'll have to buy their power somewhere else."

Bryan's board members conveyed their concerns in a Sept. 5 memo to Parsons and fellow board members. The board met Sept. 11 and voted 4-2 to approve the bond sale and debt restructuring, with Bryan's members voting in the minority. Two members, James Ratliff of Garland and Phil Gallivan of Denton, abstained from the votes because of potential conflicts of interest. Records show both board members have a financial interest in Berkshire Hathaway, an investment holding company that agency leaders mentioned as a candidate to insure the bonds.

The board also voted 4-2 to allow any legal action needed to uphold the validity of the bonds. Again, Bryan's representatives voted against the measure, and Ratliff and Gallivan abstained.

State law allows entities that issue interest-bearing bonds or other public securities to file lawsuits seeking judicial support of their plans. Through these actions, called bond validation lawsuits, entities can ask a judge in Travis County or their home county to validate their authority to issue debt. A favorable ruling reassures the market that it's safe to buy the bonds or other securities and blocks future lawsuits challenging their validity.

Bryan officials claim the board vote to approve a bond validation suit violated the Texas Open Meetings Act, because the action wasn't explicitly posted on the meeting agenda.

The act requires government bodies to post all subjects they will consider, but Parsons said no breach occurred.

"It was not specifically posted," he said. "But we did have discussion that we believe the posting was proper to allow the board to vote on a resolution to move forward on a bond validation suit."

The next day, Bryan sued in Brazos County to stop the bond sale. When the agency filed a bond validation suit Sept. 19 in Travis County, Bryan dropped its Brazos County case and filed a counterclaim in Travis County.

Agency leaders then called a board meeting for Oct. 10 to revisit the financial plans. Parsons said the meeting was needed because Bryan "expressed questions about the wording" of the bond resolution. Bryan officials saw the move as an admission that the September votes were faulty.

The board voted 6-1 to approve a new resolution allowing the bond sale and some of the planned debt refinancing, along with any legal action needed to support it. One Bryan representative was absent; the other voted against the resolution, which replaced the one passed in September. The board also rescinded another month-old resolution that would have refinanced some short-term debt.

The new bond resolution included only minor changes, Parsons said. It would allow the agency to refinance about \$185 million in debt, extending the maturity from 2018 to 2027, and spend about \$248 million on new capital projects, including a turbine upgrade and a new scrubber to reduce plant emissions.

Parsons said refinancing the debt would lead to higher electric rates for the member cities after 2018, but he doesn't expect a dramatic increase. With the bond sale, the rates the cities pay to the agency should drop \$10 to \$12 per megawatt-hour between now and 2018 before increasing by an average of \$15 to \$18 per megawatt-hour through 2035, he said.

"We think it will be in line with what market rates are at that time," Parsons said.

Also Oct. 10, the agency filed a second bond validation case in Travis County. Parsons said the two cases likely would be combined.

Conspiracy alleged

Bryan's lawsuit accuses the three North Texas cities of conspiring to use their majority position on the board for their own financial interests. It points to documents prepared for a Garland City Council meeting on Aug. 14 that show the agency's debt refinancing plan would create \$14.5 million in savings

for Garland Power & Light in the 2009 fiscal year, nearly enough to cover a projected \$15 million shortfall.

“Part of the principle is, if you’re a board member you have a fiduciary duty to TMPA,” said Hughes, the attorney for Bryan. “They’re supposed to act in TMPA’s best interest, and it looks to us like the members of the board appointed by the northern cities think that whatever is good for the three northern cities is what’s good for TMPA. And Bryan just disagrees with that.”

However, Hughes could not cite any evidence that Denton or Greenville planned to use the bond sale to cover budget deficits.

“Pending further discovery, that allegation is confined to Garland,” she said.

Garland Power & Light spokeswoman Elizabeth Kimbrough said the utility would not comment on the pending lawsuit. Attorneys from law firms representing the North Texas cities did not return calls.

The Bryan suit also accuses attorneys from three law firms of ethical breaches, saying they concurrently represented the agency and Denton, Garland and Greenville without disclosing the potential conflict of interest. The board defended its use of the law firms in a resolution passed Oct. 10, calling the allegations unfounded. The firms are Lloyd Gosselink of Austin; Fulbright & Jaworski LLP, an international firm with four Texas locations; and Tiemann, Shahady & Hamala P.C. of Pflugerville.

Denton’s role

Former Denton Mayor Perry McNeill, the board’s chairman, voted with the majority on each of the issues. He canceled a scheduled interview on the votes and directed all questions to Lisa Lemons, a spokeswoman for Denton Municipal Electric. Gallivan, Denton’s other board member, did not respond to a request for comment.

Denton Municipal Electric released a statement defending the agency’s financial plans and accusing Bryan of trying to “rewrite its agreement and obligations.”

“The city of Denton remains convinced that the recent bond resolution offers an excellent opportunity for the agency to favorably restructure its debt obligations while preparing the future use of the agency’s electric generating plant to be more operationally efficient and environmentally sensitive,” the statement said.

The statement did not address many of the allegations raised in the Bryan lawsuit or say how much of the debt Denton would assume. In an e-mail, Lemons said city officials would have no further comment.

Hughes, the Bryan attorney, said Bryan’s share of the total debt would be about \$95 million, and Denton’s would be slightly less.

Contracts require each city to pay a certain percentage of the agency’s costs in exchange for an equal percentage of its power. Garland pays 47 percent of the expenses, followed by Bryan, 21.7 percent; Denton, 21.3 percent; and Greenville, 10 percent.

In the meantime, the cities will have to deal with mounting legal fees.

The Denton Public Utilities Board voted last month to endorse a contract with the Dallas law firm Walker Sewell LLP worth up to \$90,000. Copeland, Denton’s utility attorney, said the city hired its own

legal counsel to avoid the appearance of a conspiracy.

“We did that just because we’re unsure how many suits Bryan is going to do,” he said.

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POWER AGENCY TIMELINE

Key dates in the history of the Texas Municipal Power Agency:

1960: The cities of Bryan, Denton, Garland and Greenville commission a study that determines they could save money by pooling electric operations.

1963: Bryan, Garland and Greenville join with the Brazos Electric Power Cooperative to form the Texas Municipal Power Pool.

1969: Denton joins the pool.

July 1975: The four cities create the Texas Municipal Power Agency and approve construction of the Gibbons Creek power plant next to a lignite mine near Carlos; the cities agree to pay all costs of the agency, allowing it to sell bonds to finance expenses.

September 1976: TMPA enters into identical 35-year power sales contracts with each city.

Oct. 1, 1983: Gibbons Creek plant starts commercial production.

April 1996: Gibbons Creek plant begins to run fully on Wyoming coal; lignite mine is closed.

July 1997: Bryan and the three North Texas cities clash over the payment of transmission rates, starting a legal dispute that is ongoing.

Sept. 11, 2008: TMPA board votes 4-2 to sell bonds to refinance debt and fund new projects over Bryan’s objections.

Sept. 12: Bryan sues to stop the bond sale.

Sept. 19: TMPA files a bond validation suit in Travis County.

Sept. 29: Bryan files a counterclaim in Travis County against

the agency and other member cities.

Oct. 10: TMPA board approves a bond resolution superceding the Sept. 11 resolution with a few changes; the agency also files a second bond validation suit in Travis County.

SOURCES: Texas Municipal Power Agency, staff research




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EXHIBIT RGG-5R

TMPA's RFI Response to JP-TMPA 3-12