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Addendum StartPage: 0

PUC DOCKET NO. 35665

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

PUBLIC UTILITY COMMISSION

OF TEXAS

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CLOSING ARGUMENT

OF

THE CITY OF GARLAND

DECEMBER 19, 2008

1224

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. SELECTION OF LOW COST, QUALIFIED MUNICIPALLY OWNED TSPS WILL AID THE COMMISSION IN MEETING THE REQUIREMENTS OF PURA § 39.904(G)	3
III. ELIGIBILITY FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY IS NOT A REQUIREMENT FOR DESIGNATION OF CREZ PROJECTS	4
IV. GARLAND’S REQUESTED FACILITIES.....	7
V. THE INCLUSIVE PLAN	9
VI. PROPERTY TAXES	10
VII. RATES OF RETURN OR EQUIVALENTS COMPARISONS	10
VIII. COST COMPARISONS.....	12
CONCLUSION.....	13

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CLOSING ARGUMENT OF THE CITY OF GARLAND

To The Honorable Public Utility Commission of Texas:

The City of Garland, whose municipally owned electric utility operates under the name Garland Power & Light ("Garland"), files its Closing Argument and would show the Commission as follows:

I. Introduction

Since 1923, the City of Garland has been providing electric service to its citizens through its electric department operating today as Garland Power & Light ("Garland"), a locally owned and controlled not-for-profit municipal utility. Garland is also a full service Qualified Scheduling Entity ("QSE") operating within the Electric Reliability Council of Texas ("ERCOT"). Garland has operated its QSE since they were established in 2000. Garland provides QSE services for other market participants and is the Master QSE for the Texas Municipal Power Agency's ("TMPA") Gibbons Creek Power Plant. Garland's transmission system consists of 24 municipally owned and 5 customer owned substations and 132 miles of transmission lines. Garland serves as the Transmission Operator for its transmission system and all of TMPA's 345-kV and 138-kV transmission lines and substations located in various parts of Texas.

Throughout its history, the mission of Garland has been 1) to provide high quality, safe, and reliable services at competitive rates to the citizens and businesses of the City of Garland through the efforts of a professional and dedicated workforce and 2) to enhance the quality of life in the city by creating a utility environment that supports economic development. In keeping with its stated mission, Garland submitted its CREZ Transmission Plan proposal (“CTP Proposal”). Garland has a renewables goal that requires 10% of its power supply to be derived from renewable energy resources and these transmission facilities will assist in supplying Garland customers with a portion of the wind energy produced in west Texas. The award of CREZ Facilities to Garland will permit Garland to meet its mission on behalf of its citizens and customers to maintain competitive rates, while also assisting the Commission in implementation of a CREZ transmission plan that is cost effective and most beneficial to customers.

The Joint Parties, who are trying to exclude other qualified transmission service providers, have raised three reasons to support the denial of CREZ projects to all municipally owned utility (“MOU”) applicants: (1) the fact that MOUs are not required to obtain a Certificate of Convenience and Necessity (“CCN”) for transmission facilities (resulting in the Staff’s amended recommendation), (2) the exemption of MOU transmission facilities from property taxes, and (3) the distance of the proposed projects from applicants’ current transmission facilities and the service areas. None of these reasons support rejection of the application of an experienced, low cost MOU to construct CREZ Facilities.

Commission Staff found that it is reasonable to assume that Garland will be able to successfully and adequately construct, operate and maintain CREZ Facilities.¹ Staff also found that Garland is capable of financing the projects it applied for and has the third lowest financing

¹ Rebuttal Testimony of Michael Lee (“Lee Rebuttal”), Staff Exh. 6 at 5-6.

costs of all interested TSPs and that awarding facilities to Garland is likely to result in a transmission plan that is lowest cost and most beneficial to customers.²

In its original proposal, Staff recommended that Garland be awarded CREZ projects totaling \$113.4 million. In a later, second proposal, Staff reassigned the facilities originally awarded to Garland and proposed that Garland have undivided joint ownership of certain CREZ Facilities with LCRA TSC. The basis for that proposal was to impose a requirement to obtain a CCN for the transmission lines. While Garland does not believe that the concerns about using an alternative process for routing of transmission lines are valid, Garland has agreed to pursue and is pursuing a commercially reasonable undivided joint ownership arrangement with an entity that is required to obtain a CCN.³

II. Selection of Low Cost, Qualified Municipally Owned TSPs will aid the Commission in Meeting the Requirements of PURA § 39.904(g)

The Legislature has directed the Commission to designate competitive renewable energy zones (“CREZs”) and to develop a plan to construct transmission capacity necessary to deliver the renewable energy from the CREZs to customers “in a manner that is most beneficial and cost-effective to the customers.”⁴ The term “customer” is not defined in Chapter 39, but it is defined in Chapter 17 as any person in whose name retail electric service is billed.⁵ The Legislature’s intent to protect the interests of retail customers is also shown by its inclusion of provisions to protect retail customers in Chapter 39.⁶ The Legislature’s use of the term “customers” indicates that it intended that the CREZ transmission plan be judged by its benefits

² Rebuttal Testimony of Slade Cutter, Staff Exh. 5 at 5-6.

³ Tr. at 1039, line 25 to 1040, line 25 (Dec. 3, 2008).

⁴ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 39.904(g)(2) (Vernon 2007 & Supp. 2008) (“PURA”).

⁵ PURA § 17.002(4).

⁶ PURA § 39.101.

to retail customers. This construction of PURA § 39.904(g) is further supported by the testimony of Pat Wood.⁷ Therefore, the statutory directive to develop a transmission plan that is most beneficial and cost-effective to customers requires consideration of the ultimate impact on retail customers. If low cost transmission service providers (“TSPs”) such as Garland are excluded from the construction of the CREZ Facilities, the cost of the CREZ Facilities will be higher than necessary, resulting in higher transmission rates that will be passed on to retail customers.⁸ This result would not meet the statutory standard for the required transmission plan.

Because the municipally owned TSPs are also incumbents, their ultimate retail customers will be further adversely impacted if the municipally owned TSPs are not selected. This is because the balance of payments in the postage stamp calculation of wholesale transmission rates will change, resulting in higher retail rates for customers served by municipally owned utilities if those TSPs are excluded.⁹ The assignment of CREZ Facilities to either an incumbent or new entrant in an amount significantly higher than the percentage of the TSP’s existing facilities of the total existing ERCOT facilities, will negatively impact the load served by all incumbents, including MOUs. Because of that impact, Garland has proposed that it be selected to construct approximately \$114 to \$200 million in CREZ Facilities.

III. Eligibility For A Certificate of Convenience and Necessity is Not a Requirement For Designation of CREZ Projects

MOUs are TSPs because, for the purposes of Subchapter A of Chapter 35 of PURA, they are included in the term “electric utility.” The Commission recognized this when it adopted the

⁷ Tr. at 751, line 12 to 752, line 13 (Dec. 2, 2008).

⁸ Tr. at 1039, lines 21-25 (Dec. 3, 2008).

⁹ Rebuttal Testimony of Cory J. Allen, STEC Exh. 4 at 20 to 24 and Exhibits CA-1 and CA-2; Tr. at 1038, line 9 to 1039, line 6 (Dec. 3, 2008).

definition of transmission service provider that includes a municipally owned utility.¹⁰ TSPs that are municipally owned are not subject to the requirement to obtain a CCN for the construction of transmission lines because the Legislature chose to exempt MOUs when it enacted PURA in 1975. Therefore, the Legislature has not given the Commission jurisdiction to require a municipally owned TSP to obtain a CCN for CREZ Facilities, and a MOU cannot confer such jurisdiction upon the Commission. MOUs have been constructing transmission throughout the state since 1975. MOUs know how to treat landowners fairly and to mitigate the routing of transmission lines. Proof of that is demonstrated by the fact that the Legislature has not amended PURA to require MOUs to obtain CCNs. However, interested MOUs have recognized the Commission's authority to determine the TSPs for CREZ Facilities and have submitted applications to be designated to construct CREZ Facilities.

Nothing in PURA or P.U.C. SUBST. R. 25.216 requires that a qualified TSP must be obligated to obtain a CCN to be designated to construct CREZ Facilities. The Commission's rules provide that a MOU may seek and be designated to construct CREZ Facilities. The Commission invited all interested entities to submit expressions of interest in construction of the CREZ Facilities.¹¹ The rule does not contain a stated disqualification of any existing TSPs, including MOUs.

In the rule concerning selection of transmission service providers, the Commission defined "Interested TSP" as an entity that meets the definition of TSP provided in P.U.C. SUBST. R. 25.5(143), a definition that expressly includes MOUs.¹² The Commission recognized the eligibility of a MOU to construct CREZ Facilities when it provided for the default assignment of

¹⁰ P.U.C. SUBST. R. 25.5(143).

¹¹ P.U.C. SUBST. R. 25.174(c)(1).

¹² P.U.C. SUBST. R. 25.216(c)(5).

CREZ Facilities to the existing TSP and designated the Texas Municipal Power Agency as a default provider to upgrade terminal equipment on both 345-kV lines from Gibbons Creek to Singleton.¹³

The evidence shows that concerns about the lack of a CCN process are simply misplaced. Garland has historically worked with landowners to mitigate routing impacts. Garland has committed to follow the Commission's rules concerning notice and to apply the routing criteria in PURA and the Commission's rules. Garland will notify all affected landowners on potential routes and encourage landowner's participation in the public meetings. Garland will also hold local public hearings. Garland does not intend to develop final routes until after the public hearings.¹⁴ In addition, Garland has committed to keep the Commission informed concerning routing.¹⁵

No evidence was presented that Garland has failed to notify landowners, work with landowners, and take appropriate mitigation steps to address landowners' concerns. No evidence was presented to support any of the supposed controversies that would occur if Garland continued to operate as it has both before and after the passage of PURA in 1975. The speculative controversies were presented here for the purpose of excluding a low cost, more experienced competitor.

Commission Staff has stated that its concerns about the lack of a CCN requirement would be alleviated if a MOU entered into a joint ownership agreement with an entity that is required to

¹³ *Issues Related to Default Projects Severed From Docket No. 35665 (Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy From C9ompetitive Renewable Energy Zones)*, Docket No. 36146, Final Order (Nov. 6, 2008).

¹⁴ CREZ Transmission Plan Proposal, Garland Exh. 1 at 19-20 ("CTP Proposal"); Direct Testimony of David Grubbs, Garland Exh. 3 at 14-15; Rebuttal Testimony of David Grubbs, Garland Exh. 8 at 4-5 ("Grubbs Rebuttal").

¹⁵ Grubbs Rebuttal, Garland Exh. 8 at 4.

obtain a CCN. If the Commission requires Garland to enter into an undivided joint ownership arrangement with an entity that is required to obtain a CCN, Garland commits to work in good faith to enter into a commercially reasonable agreement.¹⁶ Garland has had and continues to have discussions with other TSPs and new entrants, including STEC and Tejas as well as others but has not been able to reach a definitive agreement in the short period available.

IV. Garland's Requested Facilities

In its CTP Proposal, Garland proposed that it be selected for one of three alternative projects located in the Texas Panhandle or West Texas that fit within its financial means. These are listed below as the "Preferred Projects," the "First Alternative Projects," and the "Second Alternative Projects." The descriptions of these projects are taken from Appendix B of the CREZ Transmission Optimization Study, Scenario 2, prepared by ERCOT.

Preferred Project

The Preferred Project consists of two transmission lines. The first line is between Panhandle AA substation to Panhandle AC substation – 56 miles of single circuit to double circuit capable 345-kV line with 2-1590 ACSR conductors with an estimated cost of \$78.4 million. The second line is between Panhandle AA substation to Panhandle AB substation – 25 miles of single circuit to double circuit capable 345-kV line with 2-1590 ACSR conductors with an estimated cost of \$35 million. Garland proposes to construct at least the 345-kV portion of the collection substations at Panhandle AA, AC, and AB.

First Alternative Projects

The two first alternative projects are: 1) A transmission line between substation West A to substation Central D – 50 miles of single circuit to double circuit capable 345-kV line with

¹⁶ *Id.* at 6.

2-590 ACSR conductors with an estimated cost of \$70 million; and 2) A transmission line between substation Central E to substation Central D – 27 miles of single circuit to double circuit capable 345-kV line with 2-1590 ACSR conductors with an estimated cost of \$37 million. Garland proposes to construct at least the 345-kV portion of the collection substations at West A, Central D, and Central E.

Second Alternative Project

The second alternative project is a transmission line between the substation Panhandle BA to substation Panhandle AC – 56 miles of double circuit capable 345-kV line with 2-1590 ACSR conductors with an estimated cost of \$94.08 million. Garland proposes to construct at least the 345-kV portion of the collection substations at Panhandle BA and AC.

Projects Located in Other Areas

Garland stands ready to plan, design, construct, and own any one of the alternative projects it proposed. In addition, as stated in its CTP Proposal, Garland is willing to construct other projects within its financial limits of between approximately \$114 million to \$200 million.

In response to the Commission's questions about the acceptability of projects located closer to Garland's current operating area, Garland has found one possible option consisting of two projects that would provide it the opportunity for the level of investment Garland seeks. The two projects are (1) West Krum to Anna double circuit 345-kV line (\$80.84 million) and (2) Oklaunion to West Krum double circuit 345-kV line (\$199.28 million). The Joint Parties propose to allocate \$24.94 million of the Oklaunion to West Krum project to TNMP. If that proposed allocation is considered, the amount left available to allocate is \$174.84 million, providing a total of \$255.68 million of investment for both projects. Garland proposes that Garland be assigned 44.2% of that total, for an investment amount of \$113 million. If TNMP is

not allocated a portion of either project, Garland requests that the amount allocated to it be increased to approximately \$137.94 million, or 49.24%.

Some parties have contended that Garland should not be awarded the projects it requested or any others in the same general locations, citing concerns about the ability of Garland to successfully operate and maintain the facilities because they are distant from Garland's general service area. Garland is much closer to the proposed Panhandle projects than Sharyland, the applicant Staff suggested should be awarded the facilities in the Rebuttal Testimony of T. Brian Almon, P.E.¹⁷ In addition, the record conclusively shows that Garland is much more experienced in the operation and maintenance of transmission facilities than Sharyland.¹⁸ Moreover, whatever the location of the facilities, Garland plans to enter into joint agreements for the maintenance of facilities to reduce the cost of providing such services.¹⁹

V. The Inclusive Plan

Although Garland's preference would be to construct the facilities as set out in its CTP Proposal or the Staff's initial recommendation, Garland has offered an alternative, the "Inclusive Plan."²⁰ The Inclusive Plan designates CREZ Facilities to all applicants fairly and provides all the benefits of diversity offered by the Staff's second plan with the added benefit of including all of the public power entities. The Inclusive Plan takes advantage of the lower cost tax-exempt debt for a larger portion of the CREZ transmission facilities, thereby lowering the overall cost to customers. Of the plans before the Commission, this plan best meets the statutory requirement that the CREZ transmission plan selected by the Commission be the most beneficial and

¹⁷ Sharyland Exh. 28.

¹⁸ CTP Proposal, Garland Exh. 1 at 2; TMPA Exh. 8.

¹⁹ Grubbs Rebuttal, Garland Exh. 8 at 5; Tr. at 1035, line 6 to 1036, line 2 (Dec. 3, 2008).

²⁰ Grubbs Rebuttal, Garland Exh. 8 at 5-6 and Attachments DG-1 and DG-2.

cost-effective to customers. If the Commission wants to encourage Garland and the other public power entities to jointly own facilities with other TSPs, this plan will accommodate unrestricted choice of business relationships between the designated TSPs.

VI. Property Taxes

The Legislature has provided that municipally owned electric facilities are exempt from property taxes. This results in a lower transmission cost of service that benefits the ultimate retail customer, which meets the legislative directive to design a cost-effective plan for customers.

All ratepayers in ERCOT will be required to pay for the construction of the CREZ transmission facilities that are, in large part, in areas without any distribution service to ERCOT customers. The cost of construction and operation of the CREZ Facilities will be paid by ratepayers in Dallas and Houston, not by the residents of Amarillo or Pampa. Therefore, the interests of the ERCOT retail customers who will be required to pay for the CREZ Facilities must be weighed against the cost of any payments in lieu of taxes. If after weighing those interests, the Commission determines that Garland should make payments in lieu of taxes and recover these payments in its transmission rates, Garland will enter into such agreements. Garland Exh. 18.

VII. Rates of Return or Equivalent Comparisons

The Commissioners have expressed concerns about the ability to compare the applicants on an apples to apples basis. The most objective comparison available for review is the comparison of TSP rates of return or equivalents provided in Staff Exh. 12. As shown there, the Garland has the second lowest rate of return or equivalent. Furthermore, Chairman Smitherman

acknowledged that MOUs have the ability to borrow at cheaper rates than investor owned utilities.²¹

Sharyland's witness, Ellen Blumenthal, alleged that a MOU's transmission cost of service was not necessarily less than an investor owned utility's ("IOU's").²² Ms. Blumenthal tried to support her allegation through a calculation of the imputed rate of return for Garland as compared to an IOU's.²³ Through cross-examination, Garland demonstrated that Ms. Blumenthal's assumptions in her example were wrong because she was not using the correct annual debt service for the transmission investment and was using the wrong depreciation rate.²⁴ Through a series of exhibits that corrected the errors in Ms. Blumenthal's example, Garland demonstrated that its imputed rate of return was always lower than the IOU's.²⁵ Also, if the interest rate was increased above the assumed 5%, Garland's imputed rate of return was still lower than the IOU's.²⁶

In response to the Commission's request, Garland also provided the rates and terms available on December 4, 2008 for a thirty year \$100 million revenue bond financing for its credit rating. The Lower Colorado River Authority has equivalent ratings to Garland. The Lower Colorado River Authority completed a \$200 million financing on December 3. Therefore, Garland provided the rates that would be available to it based upon the actual yield

²¹ Tr. at 470, lines 2-10 (Dec. 2, 2008).

²² Responsive Testimony of Ellen Blumenthal ("Blumenthal Responsive"), Sharyland Exh. 10 at 2.

²³ *Id.* at 3-5 and Exhibit EB-2R.

²⁴ Tr. at 355, line 20 to 374, line 11 (Dec. 1, 2008).

²⁵ Garland Exhs. 10, 11, and 13.

²⁶ Tr. at 409, line 25 to 410, line 24 (Dec. 2, 2008)

that investors demanded in that LCRA financing. The rates were: 1 year—2.00%, 3 years—3.42%, 5 years—3.95%, 10 years—5.03%, and 30 years, 6.80%.²⁷

VIII. Cost Comparisons

The nature of the process to award the right to construct CREZ Facilities does not readily lend itself to objective comparisons for the cost of construction. In most instances, the routing and engineering of the transmission line will not be done until the line is awarded. Of necessity, estimates have been provided without the full and complete information required to make accurate construction estimates. The cost of materials and labor are constantly changing, and are very likely to be different at the time the line is constructed. Commission Staff attempted to obtain apples to apples costs through an information request. The result is summarized in Staff Exh. 10. Staff Witness Lee also prepared a comparison of cost estimates provided in prior CCN proceedings.²⁸ As shown in that comparison, the estimated costs provided in the CCN proceedings are much higher than those provided in response to Staff's Second Information Request summarized in Staff Exh. 10. Ms. Lee concluded after reviewing the available information that the average cost-per-mile for construction will not vary greatly between the interested TPSs.²⁹ In summary, because of all of the unknown factors, the construction cost estimates should not be the controlling factor in selection of an applicant to construct CREZ Facilities.

While some parties had historic information for the cost of operation and maintenance of 345-kV facilities, other applicants, including Garland, did not. Therefore, these cost comparisons are also difficult. Other than routine inspections and reporting required by TRE and

²⁷ Affidavit of David Grubbs, Garland Exh. 16.

²⁸ Lee Rebuttal, Staff Exh. 6, Exh. ML-R-Z.

²⁹ *Id.* at 9.

NERC, operation and maintenance costs are driven by environmental factors outside the control of any transmission provider. TSPs will use many of the same maintenance contractors. While there may cost differences due to economies of scale, Garland anticipates entering into joint operation and maintenance agreements with other TSPs for any awarded CREZ Facilities to ensure that its operation and maintenance costs will be as reasonable.³⁰ As with the construction cost estimates, operation and maintenance cost estimates should not be the determinative factor in selection of applicants to construct CREZ Facilities.

Conclusion

Garland has shown, and the Commission Staff has concluded, that Garland is a fully qualified, low cost TSP that should be allowed to participate in the construction of CREZ Facilities. While Garland has specifically requested certain facilities, Garland has also provided, in response to the Commission's request, alternative projects that meet Garland's financial criteria and are located closer to Garland. In addition, Garland has submitted an alternative plan, the Inclusive Plan, that fairly assigns projects and fully takes advantage of the participation of low cost MOUs. If none of the foregoing alternatives are selected by the Commission, Garland is willing to accept any CREZ Facilities it might be awarded, provided the amount awarded is approximately \$114-\$200 million. The award of CREZ Facilities to Garland is in the public interest because it will aid the Commission in meeting its statutory duty to adopt a plan that is cost effective and beneficial to customers.

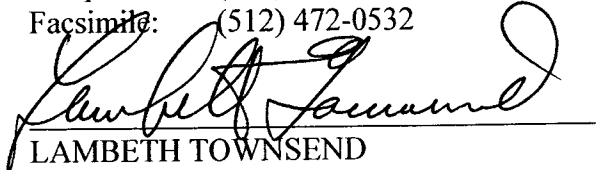
³⁰ Grubbs Rebuttal, Garland Exh. 8 at 5; Tr. at 1035, line 6 to 1036, line 2 (Dec. 4, 2008).

Respectfully submitted,

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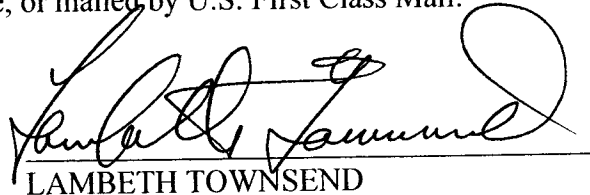
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CERTIFICATE OF SERVICE

I, Lambeth Townsend, attorney, certify that a copy of this document was served on all parties of record in this proceeding on this 19th day of December, 2008, in the following manner: hand delivered, e-mailed, sent via facsimile, or mailed by U.S. First Class Mail.



LAMBETH TOWNSEND