

CAUSE NO. D-1-GN 09-002427

CITY OF GARLAND, TEXAS,

Plaintiff,

vs.

PUBLIC UTILITY COMMISSION
OF TEXAS,

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98 JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

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At Amalia Rodriguez-Mendoza Clerk

**PLAINTIFF'S ORIGINAL PETITION AND
APPLICATION FOR STAY AND INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

The City of Garland ("Garland"), Plaintiff in the above-styled and numbered cause, pursuant to the Texas Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.001, *et seq.* (Vernon 2008) ("APA"), and the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 2007 & Supp. 2008) ("PURA"), files this original petition seeking judicial review of an order of the Public Utility Commission of Texas ("PUC" or "Commission") entered in 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*. Garland also seeks a stay of the Commission's order pursuant to TEX. UTIL. CODE ANN. § 15.004 (Vernon 2007). Garland would respectfully show the Court as follows:

I. DISCOVERY

1. Discovery is intended to be conducted under Level 3 if required in this administrative appeal. Tex. R. Civ. P. 190.4.

II. PARTIES AND SERVICE

2. The City of Garland began providing electric service to its citizens in 1923 through its electric department operating today as Garland Power & Light. Garland is a not-for-profit municipal utility. Garland is the third largest municipal utility in the State of Texas, and the thirty-ninth largest in the nation. Garland is a transmission service provider subject to PURA §§ 35.001-35.0081.

3. Defendant Commission is an administrative agency of the State of Texas. As part of Texas' efforts to develop and use renewable energy, it has been given the responsibility for determining the areas that are best suited for the development of renewable energy. These areas are called competitive renewable energy zones ("CREZs"). The Commission has also been directed to develop a plan that is most beneficial and cost-effective to customers to construct transmission capacity necessary to deliver the output from the CREZs to electric customers. The Commission may be served by service of citation on its Executive Director, Lane Lanford, Public Utility Commission of Texas, 1701 North Congress, 7th Floor, Room 110, Austin, Texas 78701.

4. Pursuant to TEX. GOV'T CODE ANN. § 2001.176(b)(2) (Vernon 2008), a copy of this original petition is being served on all parties of record in PUC Docket No. 35665 by certified mail, return receipt requested. A listing of all parties of record in PUC Docket No. 35665 is attached hereto as Exhibit A.

III. JURISDICTION

5. This suit is an appeal from the Order on Rehearing of the Commission in PUC Docket No. 35665 ("Order") and is filed pursuant to §§ 2001.171 and 2001.176 of the APA and §§ 15.001 and 15.0004 of PURA.

6. The Commission signed a final order titled "Order on Rehearing" in Docket No. 35665 on May 15, 2009. The Order was mailed to Garland on May 19, 2009. Garland received the Order on May 20, 2009. Plaintiff timely filed a motion for rehearing on June 8, 2009, attached hereto as Exhibit B and incorporated herein for all purposes. Garland's motion for rehearing was overruled by operation of law. On that date, the Order became final and appealable pursuant to § 2001.144(2)(B) of the APA. All administrative remedies have been exhausted. Plaintiff is statutorily entitled to judicial review of the Commission's Order. PURA §§ 15.001 and 15.004; APA § 2001.171. This Petition is filed within 30 days after the Order became final and appealable as required by § 2001.176 of the APA.

7. Venue for judicial review of PUC contested case orders is in Travis County, TEX. GOV'T CODE Ann. § 2001.176(b) (Vernon 2008).

IV. ADMINISTRATIVE PROCEEDINGS

8. On October 6, 2008, the Commission designated five geographic areas as CREZs in *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*, Docket No. 33672. The Commission determined the transmission capacity for each CREZ and the major facilities that were required to provide that capacity.

9. The Commission adopted a rule setting forth the criteria for selection of transmission service providers to construct the CREZ transmission facilities required by the order in Docket No. 33672. The rule listed the information that the Commission required in an application to be selected to build CREZ transmission facilities. The rule was effective on July 9, 2008. P.U.C. SUBST. R. 25.216, 33 Tex. Reg. 5301, 16 Tex. Admin. Code § 25.216 (2008).

10. *Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones*, Docket No. 35665, was filed on May 13, 2008.

11. P.U.C. SUBST. R. 25.216(d)(2) provides that for each existing CREZ transmission facility the Commission has ordered to be upgraded or modified, the existing transmission service provider ("TSP") shall be selected to construct such upgrades and modifications. An owner may request that another TSP be responsible or the Commission may select a different TSP upon a showing of good cause. On September 12, 2008, in response to a motion and stipulation by a number of parties, the Commission severed the issues relating to existing transmission facilities that were ordered to be upgraded or modified and opened a new proceeding, Docket No. 36146.

12. On September 12, 2008, Garland timely filed in Docket No. 35665 its CREZ Transmission Plan ("CTP") Proposal and supporting testimony. Two other municipally owned utilities, CPS Energy and Texas Municipal Power Agency, also timely filed CTP Proposals and supporting testimony.

13. On November 14, 2008, Garland timely filed its rebuttal testimony in Docket No. 35665.

14. The Commission held a hearing on the merits on December 1-5, 2008.

15. The parties filed post-hearing briefs on December 19, 2008.

16. The Commission issued its first order on March 20, 2009.

17. The Commission granted a motion for rehearing, and issued its Order on Rehearing May 15, 2009. The Order on Rehearing was placed in the U.S. Postal Service on May 19, 2009 and was received by Garland on May 20, 2009.

18. Garland timely filed its Motion for Rehearing on June 8, 2009.

V. ERRORS OF THE COMMISSION

19. In its Order, the Commission erred because it did not comply with the directive in PURA § 39.904(g)(2) to implement a CREZ transmission plan that is most beneficial and

cost-effective to customers. The Commission failed to do so because it did not select a low-cost, experienced TSP, Garland, and instead chose applicants with higher costs and less or no experience in constructing and operating transmission facilities in the area of the Electric Reliability Council of Texas (“ERCOT”).

20. In its Order, the Commission erred because it set forth for the first time in its Order new, after-the-fact criteria for selection of TSPs designed to exclude municipally owned utilities (“MOUs”). The Commission found that an applicant must be subject to the certificate of convenience and necessity (“CCN”) requirements of PURA and pay property taxes. Neither requirement is found in PURA § 39.904(g)(2) and/or P.U.C. SUBST. R. 25.216. As an MOU, Garland is exempt from both requirements. Each requirement results in higher costs for the construction of CREZ transmission facilities than would be incurred if a MOU were selected. The Commission expressly included MOUs within the definition of entities eligible to construct of CREZ transmission facilities. P.U.C. SUBST. R. 25.216(c)(5) incorporates by reference the definition of TSP that includes MOUs found in P.U.C. SUBST. R. 25.5(143), 16 Tex. Admin. Code § 25.5(143).

21. In its Order, the Commission erred when it found that a MOU does not have the capability to cost effectively construct and operate transmission facilities. No substantial evidence supports the Commission’s finding. In addition, the Commission did not comply with the requirements of APA § 2001.141 because it did not make any specific findings regarding any MOU, including Garland.

22. The Commission erred because it did not comply with the requirements of APA § 2001.141. The Commission made only collective, conclusory findings stating its selection of the entities for construction of the CREZ facilities.

23. The Commission's errors are set forth and particularized in Garland's Motion for Rehearing filed with the Commission on June 8, 2009, and attached hereto as Exhibit B and incorporated by reference and made a part hereof for all purposes the same as if set forth herein. As described in Exhibit B, the Commission's Order in Docket No. 35565 prejudices Garland's substantial rights and should be reversed because the administrative findings, inferences, conclusions or decisions are in violation of constitutional or statutory provisions; in excess of the Commission's statutory authority; made through unlawful procedure; affected by other error of law; not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; and arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

VI. MOTION FOR STAY OF ORDER AND TEMPORARY INJUNCTION

24. Garland seeks a stay and injunction relief, both temporary and permanent, against the Commission enjoining the implementation of the Order in Docket No. 35665 and the approval of any CCN for CREZ transmission facilities awarded in Docket No. 35665.

25. As set forth above, Garland has established that it has a likelihood of success because of the errors of the Commission. If the Commission's order is not enjoined, the Commission will proceed to issue CCNs to the applicants selected in Docket No. 35665 and the lines will be built before the completion of judicial review process, thereby denying Garland any effective relief upon remand. Garland will be irreparably harmed because it does not have an adequate remedy at law or otherwise for the harm and damages caused by the Commission's Order.

26. In the Order, the Commission has directed that two scheduling dockets be established for the purpose of determining the order in which applicants chosen to construct CREZ transmission facilities are to file applications for CCNs. In Docket No. 36801,

Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones, the parties agreed to a schedule that begins the filing of CCN applications on September 16, 2009. At its meeting on July 2, 2009, the Commission approved the parties' proposed order. A copy of that proposed order is attached as Exhibit C. In a second proceeding, Docket No. 36802, *Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Subsequent Projects for the Competitive Renewable Energy Zones*, the parties have agreed to a schedule that begins the filing of the remaining CCN applications on March 1, 2010. The Commission will consider the parties' proposed order at its July 30, 2009, meeting. A copy of that proposed order is attached as Exhibit D.

27. The Commission is required by PURA § 39.203(e) to approve or deny an application for a CCN for a new transmission facility before the 181st day after the date the application is filed. Under the schedule agreed to in Docket No. 36801, the Commission must begin granting or denying CCNs for CREZ transmission facilities no later than March 15, 2010. However, a CCN application may be acted upon before that time, either through expedited hearings or settlement.

28. If CCNs are issued prior to the determination in this appeal that the Commission erred in its selection of CREZ transmission providers, Garland will not have any effective remedy on remand because the applicant will have been granted the right to construct the facilities in a separate CCN docket. Because of the lack of an effective remedy, Garland will be irreparably harmed if the Commission's Order is not stayed and the implementation proceedings are not enjoined.

29. The lack of an effective remedy upon remand will irreparably harm Garland and its customers because it will be financially harmed in the establishment of rates for transmission service. Garland and its customers will be harmed because the Commission has failed to implement a CREZ transmission plan that is most beneficial and cost-effective to customers as required by PURA § 39.904(g)(2). Garland's customers will also be harmed because Garland was not selected to construct CREZ transmission facilities. Garland is an incumbent transmission service provider. The rates for each individual transmission service provider are separately established by the Commission based upon investment, expenses, and cost of capital. Annually, the Commission sets an ERCOT transmission rate. The rate is based upon a matrix developed by the Commission Staff using information provided by ERCOT as corrected by comments from the incumbent transmission providers. If the ERCOT transmission grid grows by the estimated \$4 billion to \$5 billion worth of CREZ transmission facilities and Garland is not able to increase its rate base, its relative transmission expense will increase, its net revenues from transmission service will decrease or evaporate, and its citizens will be harmed. Garland estimates that it will lose \$3 million to \$4 million annually in net revenues because of the Commission's actions excluding municipally owned utilities.

30. The only adequate, effective, and complete relief to Garland is to stay the Order. In order to preserve the status quo during the pendency of this action, Garland seeks, upon hearing, a temporary and permanent injunction enjoining the Commission from implementing the Order in Docket No. 35665 and approving any CCNs for the CREZ transmission facilities awarded in the Order.

VII. PRAYER FOR RELIEF

Plaintiff Garland prays that this Honorable Court grant the following relief:

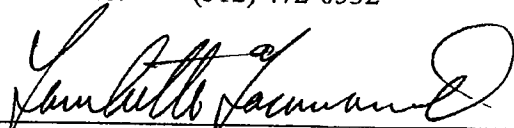
1. Upon hearing, a stay and temporary injunction be granted and a writ of injunction issue prohibiting the Commission from implementing its Order, including approval of CCNs for CREZ transmission facilities awarded in the Order.
2. Upon trial, a judgment reversing the Commission's Order in Docket No. 35665 for each of the reasons and errors described in Section V above and the attached Exhibit B, remanding Docket No. 35665 to the Commission with instructions consistent with the applicable and controlling principles of law and this Court's decision, and issuing permanent injunctive relief.
3. Such other and further relief, at law and in equity, to which the Plaintiff may be entitled.

Respectfully submitted,

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JOYCE BEASLEY
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ATTORNEYS FOR THE CITY OF GARLAND

VERIFICATION

STATE OF TEXAS

§
§

COUNTY OF MONTGOMERY § 102 - D-35665 CREZ TSP Selection\District Court Appeal

Before me, the undersigned authority, on this day personally appeared Ray Schwertner, Electric Utility Director of Garland Power & Light, by me first duly sworn, on oath deposed and said the following:

"My name is Ray Schwertner. I am of sound mind and majority age, and I am competent to make this Affidavit. I am the Electric Utility Director of Garland Power & Light.

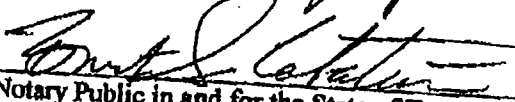
I have read Plaintiff's Original Petition and Application for Stay and Injunction.

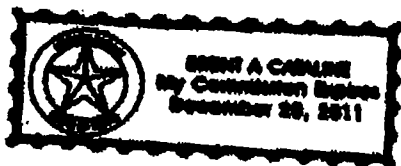
The facts stated in paragraphs 24-30 therein are within my personal knowledge and are true and correct.

This ends my Affidavit."


Ray Schwertner

SUBSCRIBED AND SWORN TO before me this 29 day of July, 2009


Notary Public in and for the State of Texas
12-28-2011

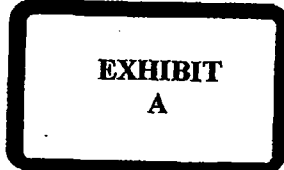


**EXHIBIT A
TO PLAINTIFF'S ORIGINAL PETITION**

PARTIES TO DOCKET NO. 35665

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

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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

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PUBLIC UTILITY COMMISSION
OF TEXAS

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PUBLIC UTILITY COMMISSION

MOTION FOR REHEARING OF THE CITY OF GARLAND

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EXHIBIT
B

DOCKET NO. 35665

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| FOR SELECTION OF ENTITIES | § | |
| RESPONSIBLE FOR TRANSMISSION | § | OF TEXAS |
| IMPROVEMENTS NECESSARY TO | § | |
| DELIVER RENEWABLE ENERGY | § | |
| FROM COMPETITIVE RENEWABLE | § | |
| ENERGY ZONES | § | |

MOTION FOR REHEARING OF THE CITY OF GARLAND

To The Honorable Public Utility Commission of Texas:

Pursuant to Section 2001.146 of the Texas Administrative Procedure Act,¹ the City of Garland, whose municipally owned electric utility operates under the name Garland Power & Light ("Garland") files its Motion for Rehearing of the Commission's Order on Rehearing ("Order") dated May 15, 2009, placed in the U.S. Postal Service on May 19, 2009 and received by Garland in the U.S. mail on May 20, 2009. This Motion is timely filed.

I. Introduction

The Commission erred when it excluded municipally owned utilities ("MOUs"), including Garland, from selection as a CREZ² transmission service provider ("TSP") because it did so based upon criteria that do not appear in either PURA³ or the Commission's rules. The Commission erred by using after-the-fact criteria in selecting TSPs to construct CREZ transmission facilities. Among other things, the Commission erred by imposing a requirement that only TSPs that are required to obtain a certificate of convenience and necessity ("CCN") may be selected to construct CREZ transmission. The Commission also imposed as a criteria the

¹ Tex. Gov't Code Ann., Chapter 2001 (Vernon 2008) ("APA").

² Competitive Renewable Energy Zone(s).

³ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 39.904(g)(2) (Vernon 2007 & Supp. 2008) ("PURA").

payment of property taxes. PURA does not include in the criteria for the development of a CREZ transmission plan and the selection of TSPs either the obtaining of a CCN or the payment of property taxes. Neither criteria appears in the Commission's rules. These new criteria were imposed after the filing of applications and without prior notice to MOUs. None of the reasons given by the Commission support rejection of the application of Garland, an experienced, low cost MOU, to construct CREZ Facilities.⁴ Furthermore, the Commission's order violates section 2001.141 of the APA.

II. The Commission Erred by Applying After-the-Fact Criteria in Selecting TSPs to Construct CREZ Facilities

The Commission erred because: (i) it did not follow PURA § 39.904(g)(2) and P.U.C. SUBST. R. 25.216 criteria; (ii) it applied criteria not found in either PURA § 39.904(g)(2) or P.U.C. SUBST. R. 25.216; (iii) it relied upon non-existent authority to create and consider additional criteria; and (iv) it did not select transmission service providers that would implement a CREZ transmission plan that will be most beneficial and cost-effective to customers. These errors are found in the Order, pp. 6-12; FF 53-72, 75, 76, 78, 79, 81-90, 92, 94-96, 120, 129; and CL 5, 7.

The Legislature has directed the Commission to designate 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."⁵ 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.⁶ The Legislature's intent to protect the interests of retail

⁴ P.U.C. SUBST. R. 25.216(c)(2).

⁵ PURA § 39.904(g)(2).

⁶ PURA § 17.002(4).

customers is also shown by its inclusion of provisions to protect retail customers in Chapter 39.⁷ The Legislature's use of the term "customers" indicates that it intended that the CREZ transmission plan be judged by its benefits to retail customers. This construction of PURA § 39.904(g) is further supported by the testimony of Pat Wood.⁸ 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 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.⁹ This result does not meet the statutory standard for the required transmission plan.

Because Garland is an incumbent TSP, its ultimate retail customers will be further adversely impacted if incumbent municipally owned utilities are excluded. 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.¹⁰ 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 customer load served by all incumbents, including MOUs.

⁷ PURA § 39.101.

⁸ Tr. at 751, line 12 to 752, line 13 (Dec. 2, 2008).

⁹ Tr. at 1039, lines 21-25 (Dec. 3, 2008).

¹⁰ 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).

The Commission erroneously cites and relies upon P.U.C. SUBST. R. 25.174(a)(4), which only contains provisions about the designation of CREZs, as its authority to create and apply the additional criteria for the selection of TSPs to construct CREZ Facilities. The only reference in P.U.C. SUBST. R. 25.174 to selection of TSPs is found in P.U.C. SUBST. R. 25.174(c). While that portion of the rule states that the Commission may establish a schedule and reporting requirements to ensure the timely completion of the CREZ Facilities, it does not provide any criteria for the selection of the TSPs. The Commission specified the criteria for selection of TSPs in P.U.C. SUBST. R. 25.216. Applicants relied upon the provisions of P.U.C. SUBST. R. 25.216 and submitted the information required by that rule. In applying the after-the-fact criteria not found in PURA or Commission rules, the Commission erred in not designating Garland as a TSP to construct the CREZ Facilities contained in Garland's CTP Proposal.

As a result of the above-mentioned errors, the Commission has not implemented a plan that is the most beneficial and cost-effective to customers. The Commission's refusal to comply with that statutory directive and select Garland as a TSP to construct CREZ Facilities prejudices Garland's substantial rights because it is (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

III. Eligibility for a Certificate of Convenience and Necessity is Not a Requirement for Being Selected as a TSP

The Commission erred because it created a new requirement for selecting a TSP to construct CREZ Facilities, eligibility for a CCN. Order, pp. 9-11; FF 53, 54, 61, 64(a)-(g), 76; CL 5, 7.

MOUs are TSPs because for the purposes of Subchapter A of Chapter 35 of PURA, they are included in the term "electric utility." 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.¹¹ 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. However, the Legislature did give the Commission authority to develop a CREZ transmission plan and to designate the TSPs to construct CREZ Facilities. Pursuant to those provisions of PURA and the Commission's rules, Garland submitted its application 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.¹² The rule does not contain a stated disqualification of any existing TSPs, including MOUs.

A reason given for the imposition of a CCN requirement is the alleged lack of due process for landowners. That reason is not justified. Legally, the landowners are afforded due process because they ultimately have the right to challenge condemnation and the valuation of property under applicable statutes regardless of whether a CCN is required. Moreover, the evidence shows that Garland has historically worked with landowners to mitigate routing impacts. Garland has committed to follow the Commission's rules concerning notice and to

¹¹ P.U.C. SUBST. R. 25.216(e)(5).

¹² P.U.C. SUBST. R. 25.174(c)(1).

apply the routing criteria in PURA and the Commission's rules. Garland will notify all affected landowners on potential routes and encourage landowner 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.¹³ In addition, Garland has committed to keep the Commission informed concerning routing.¹⁴

No evidence was presented that Garland has failed to notify landowners, work with landowners, or 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.

For the reasons stated above, the Commission's imposition of a requirement that a TSP must obtain a CCN and the refusal to select Garland as a TSP to construct CREZ Facilities because it is statutorily exempt from such requirement prejudices Garland's substantial rights because the Commission's refusal is (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

IV. Payment of Property Taxes is Not a Requirement for Being Selected as a TSP

The Commission erred in finding that payment of property taxes is a criteria for selecting a TSP to construct CREZ Facilities. FF 53, 54, 61, 64(h), 76; CL 5, 7.

¹³ 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").

¹⁴ Grubbs Rebuttal, Garland Exh. 8 at 4.

Nothing in either PURA or the Commission's rules requires that a TSP must pay property taxes to qualify for selection to construct CREZ Facilities. Municipally owned electric facilities are exempt from property taxes by law and constitutional provision. This results in a lower transmission cost of service that benefits the ultimate retail customer, which meets the legislative directive to design the most beneficial and 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.

For the reasons stated above, the Commission's imposition of a requirement that a TSP must pay property taxes and its refusal to select Garland as a TSP to construct CREZ Facilities because it is exempt from property taxes prejudices Garland's substantial rights because the Commission's refusal is (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

V. Garland is Fully Capable of Cost Effectively Constructing and Operating CREZ Facilities

The Commission erred when it found that a municipally owned utility does not have the current and expected capabilities to adequately license, construct, operate, and maintain CREZ Facilities in the most beneficial and cost-effective manner. Order, pp. 7-12; FF 61(e), 64, 75, 76, 78-79; CL 5, 7.

Garland has been providing electric service to its citizens since 1923. 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.

Commission Staff found that it is reasonable to assume that Garland will be able to successfully and adequately construct, operate, and maintain CREZ Facilities.¹⁵ Staff also found that Garland is capable of financing the projects it applied for and has the third lowest financing costs of all interested TSPs and that selecting Garland as a TSP is likely to result in a transmission plan that is lowest cost and most beneficial to customers.¹⁶ No evidence supports the Commission's conclusion that the exclusion of applicants with the most transmission service experience and a low cost of capital is required for the Commission to develop a CREZ transmission plan that is cost-effective and beneficial to consumers.

The Commission justified the ignoring of the benefits of selection of MOUs as TSPs on the grounds of "limited regulatory oversight," i.e., no CCN requirement, and speculation about alleged delays in the projects if MOUs were selected. The findings are not specific to any MOU, and no specific basis is given for the concern about delay. Moreover, the lack of a CCN requirement would allow expedition of the construction of the CREZ Facilities, not a delay. Therefore, the grounds given for the Commission's findings are self-contradictory.

For the reasons stated above, the Commission's refusal to select Garland as a TSP to construct CREZ Facilities prejudices Garland's substantial rights because the Commission's

¹⁵ Direct Testimony of Michael Lee, Staff Exh. 3 at 5-6.

¹⁶ Rebuttal Testimony of Slade Cutter, Staff Ex. 5, at 5-6.

refusal is (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

VI. The Commission Erred by Finding and Concluding that It Does Not Have Jurisdiction Over MOUs Selected to Construct CREZ Facilities

The Commission erred in finding and concluding that it does not have jurisdiction over MOUs selected as TSPs to construct CREZ Facilities. Order, pp. 9-12; FF 64, 76; CL 5, 7.

As discussed above, although MOUs are exempt from CCN requirements, Garland is subject to the Commission's regulatory oversight as are all other TSPs under Chapter 35 of PURA. Section 39.904 of PURA specifically provides that transmission service for a CREZ is subject to Chapter 35.

Section 39.904(g)(2) and (j) of PURA requires the Commission to develop and implement a transmission plan that is most beneficial and cost-effective for customers. The Legislature has necessarily granted the Commission the power to determine the general location and routing of the CREZ Facilities, the TSP authorized to construct the CREZ Facilities, the scheduling of the facilities, and oversight requirements. In approving Scenario 2 in its final order in Docket No. 33672, the Commission determined the general location and routing of the CREZ Facilities. In its order in this docket and in Docket No. 36146, the Commission is selecting TSPs to construct CREZ Facilities and establishing schedules and oversight requirements. Also, in its order in this docket, the Commission has exercised its authority to require default providers, including MOUs, to comply with various reporting requirements. The Commission Staff has previously required that default providers, including MOUs, provide

specified reports. In recognition of the Commission's authority under PURA §§ 39.904(g)(2) and (j), Garland submitted its application to be designated as a TSP to construct CREZ Facilities.

For the reasons stated above, the Commission's refusal to select Garland to construct CREZ Facilities prejudices Garland's substantial rights because the Commission's refusal is (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

VII. The Commission's Order Does Not Comply with Section 2001.141 of the APA .

The Commission erred because it has not provided any specific findings supporting its selection of the designated TSPs and how their selection fulfills the requirements of PURA § 39.904(g)(2) as required by Section 2001.141 of the APA. The Commission further erred because it has not provided any specific findings supporting its rejection of Garland's application. This error permeates the entire order, including without limitation the following: Order at pp. 1-2, 5-12; FF 44-79, 81-96; CL 5, 6.

The Commission merely recites the provisions of P.U.C. SUBST. R. 25.216, but makes no individual findings concerning the merits of any selected TSP or how each selected TSP meets the rule's criteria. The Commission's order provides no guidance concerning the factual basis for the Commission's selection of each designated TSP. The Commission merely makes conclusory collective findings that the selected TSPs meet the Commission's criteria without any findings of fact to support the conclusory findings. The Commission also makes only conclusory and collective findings that MOUs should not be selected as TSPs. The conclusory findings in the Commission's order do not support, and cannot be used to support, any assertion that the

Commission has implemented a CREZ transmission plan that would be most beneficial and cost-effective to customers as required by PURA § 39.904(g)(2).

For the reasons stated above, the Commission's selection of the listed TSPs and the rejection of Garland's application to be designated as a TSP to construct CREZ Facilities is (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other error of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

VIII. Correction to Finding of Fact No. 76(a)

In Finding of Fact No. 76(a), the Order refers back to Finding of Fact No. 62. Due to the addition of two findings of fact, Finding of Fact No. 62 was renumbered as Finding of Fact No. 64 in the Order on Rehearing. Finding of Fact No. 76(a) should be corrected to properly reference Finding of Fact No. 64.

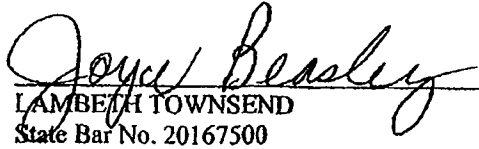
WHEREFORE, PREMISES CONSIDERED, Garland moves that its Motion for Rehearing be granted and Garland be selected as TSP to construct CREZ Facilities.

Respectfully submitted,

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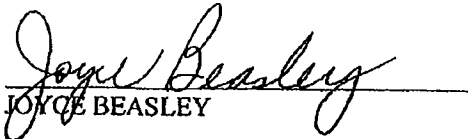

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ATTORNEYS FOR THE CITY OF GARLAND

CERTIFICATE OF SERVICE

I, Joyce Beasley, attorney, certify that a copy of this document was served on all parties of record in this proceeding on this 8th day of June, 2009, in the following manner: hand delivered, e-mailed, sent via facsimile, or mailed by U.S. First Class Mail.


JOYCE BEASLEY

DOCKET NO: 36801

| | | |
|-------------------------------|---|---------------------------|
| PROCEEDING TO SEQUENCE | § | PUBLIC UTILITY COMMISSION |
| CERTIFICATE OF CONVENIENCE | § | |
| AND NECESSITY APPLICATIONS | § | OF TEXAS |
| FOR THE PRIORITY PROJECTS FOR | § | |
| THE COMPETITIVE RENEWABLE | § | |
| ENERGY ZONES | § | |

PROPOSED ORDER

This Order approves the Settlement Agreement (Agreement) between the Staff of the Public Utility Commission of Texas (Staff), Electric Reliability Council of Texas (ERCOT), LCRA Transmission Services Corporation (LCRA TSC), Oncor Electric Delivery Company LLC (Oncor), AEP Texas North Company (TNC) and AEP Texas Central Company (TCC), AES Wind Generation, Inc. (AES Wind), City of Austin d/b/a Austin Energy (Austin Energy), Cross Texas Transmission, LLC (Cross Texas), E.ON Climate & Renewables North America Inc. (E.ON), Electric Transmission Texas, LLC (ETT), Eurus Energy America Corporation (Eurus), Horizon Wind Energy, LLC (Horizon), Iberdrola Renewables, Inc. (Iberdrola), Invenergy Wind North America, LLC (Invenergy), Lone Star Transmission, LLC (Lone Star), NextEra Energy Resources, LLC (NextEra), Sharyland Utilities, L.P. (Sharyland), South Texas Electric Cooperative (STEC), Wind Energy Transmission Texas, LLC (WETT), (together, Parties) regarding this docket to sequence certificate of convenience and necessity (CCN) applications for priority projects for the competitive renewable energy zones (CREZ) established in Docket No. 35665¹. The Agreement resolves all of the issues in this docket. The Agreement is unopposed and provides for a reasonable resolution of the issues in this docket.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law:

¹ Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones, Docket No. 35665, Order at Ordering Paragraph 3 (March 30, 2009).



I. Findings of Fact

1. On May 15, 2009 the Commission issued its Order on Rehearing in Docket No. 35665 in which it ordered LCRA TSC and Oncor to construct the transmission facilities identified as CREZ priority projects as follows:²

| Description | Selected TSP |
|---|--------------|
| Gillespie to Newton single-circuit, double-circuit-capable 345-kV line | LCRA TSC |
| Kendall to Gillespie single-circuit, double-circuit-capable 345-kV line | LCRA TSC |
| McCamey D to Kendall double-circuit 345-kV line | LCRA TSC |
| McCamey D to Twin Buttes single-circuit, double-circuit-capable 345-kV line | LCRA TSC |
| Bluff Creek to Brown double-circuit 345-kV line | Oncor |
| Central A to Tonkawas double-circuit 345-kV line | Oncor |
| Central B to Central A double-circuit 345-kV line | Oncor |
| Central Bluff to Bluff Creek double-circuit 345-kV line | Oncor |
| Sweetwater to Central Bluff double-circuit 345-kV line | Oncor |
| Tonkawas to Sweetwater double-circuit 345-kV line | Oncor |
| Bowman to Oklaunion double-circuit 345-kV line | Oncor |

2. The Order on Rehearing in Docket No. 35665 instructed the TSPs assigned responsibility for priority projects to participate with Staff and ERCOT in this docket to sequence priority project CCN applications.
3. Staff, ERCOT, LCRA TSC, Oncor, and numerous intervenors participated in a Settlement Conference on May 18, 2009.

² See *id.* at Ordering Paragraph 1, referencing Attachment B.

4. LCRA TSC, Oncor, and ERCOT participated in one or more settlement discussions with Staff, the purpose of which was to amicably resolve this matter by determining the most efficient and effective manner in which to sequence the CREZ priority projects.
5. LCRA TSC and Oncor determined that it would be most efficient and effective to condense the CREZ priority projects assigned to them into nine CCN applications as follows:

| CREZ Priority Project(s) | TSP |
|--|------------|
| Central B – Central A – Tonkawas | Oncor |
| Tonkawas – Sweetwater – Central Bluff | Oncor |
| Oklunion – Bowman | Oncor |
| Brown – Newton | Oncor |
| Newton – Killeen | Oncor |
| Kendall/Westwind - Gillespie – Newton ³ | LCRA TSC |
| Central Bluff – Bluff Creek | Oncor |
| Bluff Creek - Brown | Oncor |
| Twin Buttes – McCamey D – Westwind - Kendall | LCRA TSC |

6. LCRA TSC and Oncor will be prepared and capable of filing CCN applications for all of their assigned CREZ priority projects on or before October 7, 2009.
7. Staff determined that it would be the most efficient and effective use of Staff resources to file the CCN applications in three groups of three filings, spaced three weeks apart so that Staff can process the applications on a procedural schedule in accordance with PURA § 39.203(e). Because these procedural schedules must be completed in 180 days, Staff resources could be unduly burdened if too many CREZ priority project CCN applications are filed on the

³ LCRA TSC is proposing a modification to these CREZ transmission projects that would introduce a new substation called "Westwind." This project modification and new station will be outlined in LCRA TSC's respective CREZ CCN Applications for these projects.

same date. Consequently, to accommodate Staff, LCRA TSC and Oncor requested that the Commission allow additional time to file three CCN applications: Central Bluff- Bluff Creek, Bluff Creek – Brown, and Twin Buttes – McCamey D – Westwind - Kendall, in accordance with P.U.C. SUBST. R. 25.174(c)(4) for good cause shown.

8. Good cause exists to allow additional time to file the CCN applications for Central Bluff- Bluff Creek, Bluff Creek – Brown, and Twin Buttes – McCamey D - Westwind – Kendall.
9. The Agreement fully resolves the matters that were the subject of this docket.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.051, 37.051, 39.203(e) and 39.904.
2. Proper notice of this docket was provided pursuant to P.U.C. PROC. R. 22.55.
3. P.U.C. SUBST. R. 25.174(c)(4) requires that no later than one year after an order by the commission designating a CREZ, the transmission service provider (TSP) or TSPs selected to provide transmission service in or to a CREZ shall file applications for all required CCNs for transmission facilities identified by the commission in the CREZ order as most beneficial and cost-effective to the customers.
4. P.U.C. SUBST. R. 25.174(c)(4) provides that the commission may allow additional time for a TSP to file an application upon a showing of good cause by the TSP.
5. P.U.C. SUBST. R. 25.174(c)(4) provides that the commission may establish a filing schedule if a CREZ order requires numerous CCN applications.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement is approved and the Parties shall be bound to its terms.
2. CCN applications for the CREZ priority transmission projects shall be filed as follows:

| Date | CREZ Priority Project(s) | TSP |
|--------------------|---|----------|
| September 16, 2009 | Central B – Central A – Tonkawas | Oncor |
| September 16, 2009 | Tonkawas – Sweetwater – Central Bluff | Oncor |
| September 16, 2009 | Oklaunion – Bowman | Oncor |
| October 7, 2009 | Brown – Newton | Oncor |
| October 7, 2009 | Newton – Killeen | Oncor |
| October 7, 2009 | Kendall/Westwind – Gillespie - Newton | LCRA TSC |
| October 28, 2009 | Central Bluff – Bluff Creek | Oncor |
| October 28, 2009 | Bluff Creek - Brown | Oncor |
| October 28, 2009 | Twin Buttes – McCamey D - Westwind - Kendall | LCRA TSC |

3. Entry of this order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Neither should the entry of an order consistent with the Agreement be regarded as a binding holding or precedent as to the appropriateness of any principle underlying the Agreement.
4. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS on the ____ day of _____

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR. COMMISSIONER

DOCKET NO. 36801

| | | |
|-------------------------------|---|---------------------------|
| PROCEEDING TO SEQUENCE | § | PUBLIC UTILITY COMMISSION |
| CERTIFICATE OF CONVENIENCE | § | |
| AND NECESSITY APPLICATIONS | § | OF TEXAS |
| FOR THE PRIORITY PROJECTS FOR | § | |
| THE COMPETITIVE RENEWABLE | § | |
| ENERGY ZONES | § | |

SETTLEMENT AGREEMENT

Staff (Staff) of the Public Utility Commission of Texas (Commission) along with the Electric Reliability Council of Texas (ERCOT), LCRA Transmission Services Corporation (LCRA TSC), Oncor Electric Delivery Company LLC (Oncor), AEP Texas North Company (TNC) and AEP Texas Central Company (TCC), AES Wind Generation, Inc. (AES Wind), City of Austin d/b/a Austin Energy (Austin Energy), Cross Texas Transmission, LLC (Cross Texas), E.ON Climate & Renewables North America Inc. (E.ON), Electric Transmission Texas, LLC (ETT), Eurus Energy America Corporation (Eurus), Horizon Wind Energy, LLC (Horizon), Iberdrola Renewables, Inc. (Iberdrola), Invenergy Wind North America, LLC (Invenergy), Lone Star Transmission, LLC (Lone Star), NextEra Energy Resources, LLC (NextEra), Sharyland Utilities, L.P. (Sharyland), South Texas Electric Cooperative (STEC), Wind Energy Transmission Texas, LLC (WETT) (together, Parties), enter into this Settlement Agreement (Agreement). Texas Industrial Energy Consumers (TIEC), does not oppose this agreement. Subject to Commission approval, this Agreement resolves and concludes this docket to sequence Competitive Renewable Energy Zones (CREZ) priority project certificate of convenience and necessity (CCN) applications.

The Parties agree as follows:

1. In accordance with P.U.C. SUBST. R. 25.174(c)(4), the Parties respectfully request that the Commission establish a filing schedule in accordance with this Agreement.
2. In accordance with P.U.C. SUBST. R. 25.174(c)(4), LCRA TSC and Oncor, to accommodate Staff, respectfully request that the Commission allow three CREZ

priority project CCN applications to be filed after October 7, 2009 for good cause shown by Oncor and LCRA TSC. Specifically, Staff resources will be most effectively applied to the CCN applications if sufficient time is allocated between each filing date to avoid extensive overlap of schedules and deadlines among CREZ priority projects.

3. The Parties propose the following schedule for the filing of CREZ priority CCN applications:

| Date | CREZ Priority Project | TSP |
|--------------------|--|------------|
| September 16, 2009 | Central B – Central A – Tonkawas | Oncor |
| September 16, 2009 | Tonkawas – Sweetwater – Central Bluff | Oncor |
| September 16, 2009 | Oklunion – Bowman | Oncor |
| October 7, 2009 | Brown – Newton | Oncor |
| October 7, 2009 | Newton – Killeen | Oncor |
| October 7, 2009 | Kendall/Westwind – Gillespie - Newton | LCRA TSC |
| October 28, 2009 | Central Bluff – Bluff Creek | Oncor |
| October 28, 2009 | Bluff Creek - Brown | Oncor |
| October 28, 2009 | Twin Buttes – McCamey D -Westwind - Kendall | LCRA TSC |

4. The Parties contemplate that this Agreement, including the attached Proposed Order, will be approved by the Commission. In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other Parties written notice within 20 calendar days of the date the Commission files the order acting on this Agreement. Failure to provide such notice within the specified time

period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.

5. This Agreement is the final and entire agreement between the Parties regarding the matters addressed herein and supersedes all other communications among the Parties or their representatives with regard to the subjects contained herein, and this Agreement binds the Parties' successors and assigns.
6. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.

EXECUTED by the Parties by their authorized representatives designated below.

Date: June 2, 2009

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DOCKET NO. 36802

PROCEEDING TO SEQUENCE §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY APPLICATIONS §
FOR THE SUBSEQUENT PROJECTS §
FOR THE COMPETITIVE §
RENEWABLE ENERGY ZONES §

PUBLIC UTILITY COMMISSION
OF TEXAS

2009 JUN -1 11:58
PUBLIC UTILITY COMMISSION

PROPOSED ORDER

This Order addresses the Settlement Agreement (Agreement) between the Public Utility Commission of Texas (Commission) Staff, the Electric Reliability Council of Texas, Inc. (ERCOT), AEP Texas North Company (TNC) and AEP Texas Central Company (TCC), AES Wind Generation, Inc. (AES Wind), Cross Texas Transmission, LLC (Cross Texas), E.ON Climate & Renewables North America Inc. (E.ON), Electric Transmission Texas, LLC (ETT), Eurus Energy America Corporation (Eurus), Horizon Wind Energy, LLC (Horizon), Iberdrola Renewables, Inc. (Iberdrola), Invenergy Wind North America, LLC (Invenergy), LCRA Transmission Services Corporation (LCRA TSC), Lone Star Transmission, LLC (Lone Star), Longfellow Ranch Partners LP (Longfellow Ranch), NextEra Energy Resources, LLC (NextEra), Oncor Electric Delivery Company LLC (Oncor), RES America Developments, Inc. (RES), Sharyland Utilities, L.P. (Sharyland), South Texas Electric Cooperative (STEC), Wind Energy Transmission Texas, LLC (WETT), and Worldwide Energy, Inc. (Worldwide) (together, Parties) regarding this docket to sequence certificate of convenience and necessity (CCN) applications for subsequent projects for the competitive renewable energy zones (CREZs) established in Docket No. 35665.¹ The Agreement resolves all of the issues in this docket. The Agreement is unopposed and provides for a reasonable resolution of the issues in this docket. The Agreement is approved.

The Commission adopts the following findings of fact and conclusions of law:

¹ Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy From Competitive Renewable Energy Zones, Docket No. 35665, Order on Rehearing (May. 15, 2009).

EXHIBIT
D

I. Findings of Fact

1. On May 15, 2009, the Commission issued its Order on Rehearing in Docket No. 35665 in which it ordered Cross Texas, ETT, LCRA TSC, Lone Star, Oncor, Sharyland, STEC, and WETT (collectively, Designated TSPs) to construct the transmission facilities identified as CREZ subsequent projects as follows:²

| CREZ Project | TSP |
|--|-------------|
| PanhandleB B to Oklaunion double-circuit 345-kV line (PanhandleB B to Tesla) | Cross Texas |
| PanhandleB B to Panhandle B A double-circuit 345-kV line | Cross Texas |
| PanhandleA C to PanOakMid double-circuit 345-kV line (PanhandleA C to Tesla) | Cross Texas |
| Central B to Willow Creek double-circuit 345-kV line (Central B to Clear Crossing) | ETT |
| PanhandleB B to Oklaunion double-circuit 345-kV line (Tesla to Oklaunion) | ETT |
| PanhandleA D to Oklaunion (Combined Application) Oklaunion to PanOakMid double-circuit 345-kV PanhandleA D to PanOakMid double-circuit 345-kV line | ETT |
| Tesla to Central C (Combined Application) PanOakMid to Central C double-circuit 345-kV line (PanOakMid to Clear Crossing portion) PanOakMid to Central C double-circuit 345-kV line (Clear Crossing to Central C portion) | ETT |
| PanhandleA C to PanOakMid double-circuit 345-kV line (Tesla to PanOakMid) | ETT |
| McCamey A to Odessa single-circuit, double-circuit-capable 345-kV line | LCRA TSC |
| McCamey C to McCamey A single-circuit, double-circuit-capable 345-kV line | LCRA TSC |
| Central A to Sam Switch (Combined Application) Central A to Central C double-circuit 345-kV line Central C to Navarro/Sam Switch double-circuit 345-kV line (Central C to Navarro portion) Central C to Navarro/Sam Switch double-circuit 345-kV line (Navarro to Sam Switch portion) | Lone Star |
| Oklaunion to West Krum double-circuit 345-kV | Oncor |
| West B to Moss single-circuit 138-kV line | Oncor |
| Willow Creek to Hicks double-circuit 345-kV line | Oncor |
| Central B to Willow Creek double-circuit 345-kV line (Clear Crossing to Willow Creek) | Oncor |
| West Krum to Anna double-circuit 345-kV line | Oncor |

² Docket No. 35665, Order on Rehearing at 61, Ordering Paragraph No. 1, referencing Attachment B (May 15, 2009).

| | |
|--|-----------|
| PanhandleA B to PanhandleB A single-circuit, double-circuit-capable 345-kV line | Sharyland |
| PanhandleA C to PanhandleA D double-circuit 345-kV line | Sharyland |
| PanhandleA B to PanhandleA C (Combined Application) PanhandleA A to PanhandleA C single-circuit, double-circuit-capable 345-kV line | Sharyland |
| PanhandleA A to PanhandleA B single-circuit, double-circuit-capable 345-kV line | |
| PanhandleB A to PanhandleA C double-circuit 345-kV line | Sharyland |
| | |
| McCamey C to McCamey D single-circuit, double-circuit-capable 345-kV line | STEC |
| | |
| PanhandleA D to Central B double-circuit 345-kV line | WETT |
| West A to West C single-circuit, double-circuit-capable 345-kV line | WETT |
| West C to Odessa single-circuit, double-circuit-capable 345-kV line | |
| Central A to West A double-circuit 345-kV line | |
| West A to Central D single-circuit, double-circuit-capable 345-kV line | WETT |
| Central D to Divide single-circuit, double-circuit-capable 345-kV line | |
| Central E to Central D single-circuit, double-circuit-capable 345-kV line | |

2. The Order on Rehearing in Docket No. 35665 instructed ERCOT to file an analysis and sequencing recommendation regarding the subsequent projects no later than May 29, 2009. ERCOT filed its Analysis & Sequencing Recommendation on May 29, 2009.
3. The Order on Rehearing in Docket No. 35665 instructed the Designated TSPs, Commission Staff, and ERCOT to file a jointly proposed sequencing order in this docket no later than 30 days after ERCOT filed its analysis and sequencing recommendation. On June 26, 2009, the Parties filed a Settlement Agreement and Proposed Order in compliance with the Order on Rehearing.
4. Commission Staff, ERCOT, the Designated TSPs, and numerous intervenors participated in a Settlement Conference on June 16, 2009.
5. The Designated TSPs and ERCOT participated in one or more settlement discussions with Commission Staff, the purpose of which was to amicably resolve this matter by determining the most efficient and effective manner in which to sequence the CREZ subsequent projects.

6. The Designated TSPs determined that it would be most efficient and effective to condense the CREZ subsequent projects assigned to them into 24 CCN applications as described in Finding of Fact No. 1 above.
7. Commission Staff determined that it would be the most efficient and effective use of Commission resources to file the CCN applications in eight groups of three filings each, spaced three weeks apart so that the applications can be processed on a procedural schedule in accordance with § 39.203(e) of the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2008) (PURA).
8. Because these applications must be decided in 180 days, Commission resources could be unduly burdened if too many CREZ subsequent project CCN applications are filed on the same date.
9. Because the Commission must retain flexibility to make changes to the schedule based on considerations related to P.U.C. SUBST. R. 25.174(c)(6) and Project No. 34577³ or otherwise, Commission Staff may file a petition to modify the schedule approved by this Order without violating the Agreement. No party waives the right to object to modification of the schedule in a future docket by joining the Agreement. This provision does not prevent the Commission from making changes to the schedule on its own motion or for good cause shown by that of an entity other than Commission Staff.
10. The Agreement fully resolves the matters that were the subject of this docket.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.051, 37.051, 39.203(e) and 39.904.
2. Proper notice of this docket was provided pursuant to P.U.C. PROC. R. 22.55.
3. P.U.C. SUBST. R. 25.174(c)(4) requires that no later than one year after an order by the Commission designating a CREZ, the TSP or TSPs selected to provide transmission

³ *Proceeding to Establish Policy Relating to Excess Development in Competitive Renewable Energy Zones, Project No. 34577 (pending).*

service in or to a CREZ shall file applications for all required CCNs for transmission facilities identified by the Commission in the CREZ order as most beneficial and cost-effective to the customers.

4. P.U.C. SUBST. R. 25.174(c)(4) provides that the Commission may allow additional time for a TSP to file an application upon a showing of good cause by the TSP.
5. P.U.C. SUBST. R. 25.174(c)(4) provides that the Commission may establish a filing schedule if a CREZ order requires numerous CCN applications.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement provided with this Order as Attachment I is approved and the Parties shall be bound by its terms.
2. CCN applications for the CREZ subsequent transmission projects shall be filed as follows:

| Date | CREZ Priority Project | TSP |
|----------------|--|-------------|
| March 1, 2010 | Oklaunion to West Krum double-circuit 345-kV | Oncor |
| March 1, 2010 | Central B to Willow Creek double-circuit 345-kV line (Central B to Clear Crossing) | ETT |
| March 1, 2010 | Panhandle B B to Oklaunion double-circuit 345-kV line (Panhandle B to Tesla) | Cross Texas |
| March 22, 2010 | Panhandle A D to Central B double-circuit 345-kV line | WETT |
| March 22, 2010 | Central A to Sam Switch (Combined Application) Central A to Central C double-circuit 345-kV line Central C to Navarro/Sam Switch double-circuit 345-kV line (Central C to Navarro portion) Central C to Navarro/Sam Switch double-circuit 345-kV line (Navarro to Sam Switch portion) | Lone Star |
| March 22, 2010 | West B to Moss single-circuit 138-kV line | Oncor |
| April 12, 2010 | Panhandle A B to Panhandle B A single-circuit, double-circuit-capable 345-kV line | Sharyland |
| April 12, 2010 | Panhandle B to Oklaunion double-circuit 345-kV line (Tesla to Oklaunion) | ETT |
| April 12, 2010 | Willow Creek to Hicks double-circuit 345-kV line | Oncor |

| | | |
|---------------|--|-------------|
| May 3, 2010 | West A to West C single-circuit, double-circuit-capable 345-kV line West C to Odessa single-circuit, double-circuit-capable 345-kV line Central A to West A double-circuit 345-kV line | WETT |
| May 3, 2010 | Central B to Willow Creek double-circuit 345-kV line (Clear Crossing to Willow Creek) | Oncor |
| May 3, 2010 | PanhandleA C to PanhandleA D double-circuit 345-kV line | Sharyland |
| May 24, 2010 | PanhandleA D to Oklaunion (Combined Application) Oklaunion to PanOakMid double-circuit 345-kV Panhandle A D to PanOakMid double-circuit 345-kV line | ETT |
| May 24, 2010 | West Krum to Anna double-circuit 345-kV line | Oncor |
| May 24, 2010 | McCamey A to Odessa single-circuit, double-circuit-capable 345-kV line | LCRA TSC |
| June 14, 2010 | PanhandleB to PanhandleB A double-circuit 345-kV line | Cross Texas |
| June 14, 2010 | McCamey C to McCamey D single-circuit, double-circuit-capable 345-kV line | STEC |
| June 14, 2010 | PanhandleA B to PanhandleA C (Combined Application) PanhandleA A to PanhandleA C single-circuit, double-circuit-capable 345-kV line Panhandle A A to PanhandleA B single-circuit, double-circuit-capable 345-kV line | Sharyland |
| July 5, 2010 | PanhandleA C to PanOakMid double-circuit 345-kV line (PanhandleA C to Tesla) | Cross Texas |
| July 5, 2010 | PanhandleB A to PanhandleA C double-circuit 345-kV line | Sharyland |
| July 5, 2010 | Open | |
| July 26, 2010 | Tesla to Central C (Combined Application) PanOakMid to Central C double-circuit 345-kV line (PanOakMid to Clear Crossing portion; Clear Crossing to Central C portion) PanhandleA C to PanOakMid double-circuit 345-kV line (Tesla to PanOakMid) | ETT |
| July 26, 2010 | McCamey C to McCamey A single-circuit, double-circuit-capable 345-Kv line | LCRA TSC |
| July 26, 2010 | West A to Central D single-circuit, double-circuit-capable 345-kV line Central D to Divide single-circuit, double-circuit-capable 345-kV line Central E to Central D single-circuit, double-circuit-capable 345-kV line | WETT |

3. Commission Staff may file a petition to modify the schedule approved by this Order. No party waives the right to object to modification of the schedule in a future docket by joining the Agreement. In addition, this Order does not prevent the Commission from making changes to the schedule on its own motion or for good cause shown by that of an entity other than Commission Staff.
4. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order shall not

be regarded as binding holding or precedent as to the appropriateness of any principle that may underlie the Agreement.

5. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS on the _____ day of July 2009.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

DONNA L. NELSON, COMMISSIONER

KENNETH W. ANDERSON, JR., COMMISSIONER

DOCKET NO. 36802

| | | |
|------------------------------------|---|----------------------------------|
| PROCEEDING TO SEQUENCE | § | PUBLIC UTILITY COMMISSION |
| CERTIFICATE OF CONVENIENCE | § | |
| AND NECESSITY APPLICATIONS | § | OF TEXAS |
| FOR THE SUBSEQUENT PROJECTS | § | |
| FOR THE COMPETITIVE | § | |
| RENEWABLE ENERGY ZONES | § | |

2009 JUN 25 PM 2:06

SETTLEMENT AGREEMENT

Staff (Staff) of the Public Utility Commission of Texas (Commission) along with the Electric Reliability Council of Texas (ERCOT), AEP Texas North Company (TNC) and AEP Texas Central Company (TCC), AES Wind Generation, Inc. (AES Wind), Cross Texas Transmission, LLC (Cross Texas), E.ON Climate & Renewable North America Inc. (E.ON), Electric Transmission Texas, LLC (ETT), Eurus Energy America Corporation (Eurus), Horizon Wind Energy, LLC (Horizon), Iberdrola Renewables, Inc. (Iberdrola), Invenergy Wind North America, LLC (Invenergy), LCRA Transmission Services Corporation (LCRA TSC), Lone Star Transmission, LLC (Lone Star), Longfellow Ranch Partners LP (Longfellow Ranch), NextEra Energy Resources, LLC (NextEra), Oncor Electric Delivery Company LLC (Oncor), RES America Developments, Inc. (RES); Sharyland Utilities, L.P. (Sharyland), South Texas Electric Cooperative (STEC), Wind Energy Transmission Texas, LLC (WETT), and Worldwide Energy, Inc. (Worldwide) (together, Parties), enter into this Settlement Agreement (Agreement). Texas Industrial Energy Consumers (TIEC) does not oppose this agreement. Subject to Commission approval, this Agreement resolves and concludes this docket to sequence Competitive Renewable Energy Zones (CREZ) subsequent project certificate of convenience and necessity (CCN) applications.

The Parties agree as follows:

1. In accordance with P.U.C. SUBST. R. 25.174(c)(4), the Parties respectfully request that the Commission establish a filing schedule in accordance with this Agreement.

2. The Parties propose the following schedule for the filing of CREZ subsequent CCN applications:

| Date | CREZ Project | TSP |
|----------------|---|-------------|
| March 1, 2010 | Oklaunion to West Krum double circuit 345kV | Oncor |
| March 1, 2010 | Central B to Willow Creek double circuit 345kV line (Central B to Clear Crossing) | ETT |
| March 1, 2010 | PanhandleB B to Oklaunion double circuit 345kV line (Panhandle B to Tesla) | Cross Texas |
| March 22, 2010 | PanhandleA D to Central B double circuit 345kV line | WETT |
| March 22, 2010 | Central A to Sam Switch (Combined Application) Central A to Central C double circuit 345kV line Central C to Navarro/Sam Switch double circuit 345 kV line (Central C to Navarro portion) Central C to Navarro/Sam Switch double circuit 345 kV line (Navarro to Sam Switch portion) | Lone Star |
| March 22, 2010 | West B to Moss single circuit 138kV line | Oncor |
| April 12, 2010 | PanhandleA B to PanhandleB A single circuit, double circuit capable 345 kV line | Sharyland |
| April 12, 2010 | Panhandle B to Oklaunion double circuit 345kV line (Tesla to Oklaunion) | ETT |
| April 12, 2010 | Willow Creek to Hicks double circuit 345kV line | Oncor |
| May 3, 2010 | West A to West C single circuit, double circuit capable 345kV line West C to Odessa single circuit, double circuit capable 345kV line Central A to West A double circuit 345kV line | WETT |
| May 3, 2010 | Central B to Willow Creek double circuit 345kV line (Clear Crossing to Willow Creek) | Oncor |
| May 3, 2010 | PanhandleA C to PanhandleA D double circuit 345kV line | Sharyland |
| May 24, 2010 | PanhandleA D to Oklaunion (Combined Application) Oklaunion to PanOakMid double circuit 345kV PanhandleA D to PanOakMid double circuit 345kV line | ETT |
| May 24, 2010 | West Krum to Anna double circuit 345kV line | Oncor |
| May 24, 2010 | McCamey A to Odessa single circuit, double circuit | LCRA TSC |

| | | |
|---------------|--|-------------|
| | capable 345kV line | |
| June 14, 2010 | PanhandleB to PanhandleB A double circuit 345kV line | Cross Texas |
| June 14, 2010 | McCamey C to McCamey D single circuit, double circuit capable 345kV line | STEC |
| June 14, 2010 | PanhandleA B to PanhandleA C (Combined Application) PanhandleA A to PanhandleA C single circuit, double circuit capable 345kV line PanhandleA A to PanhandleA B single circuit, double circuit capable 345kV line | Sharyland |
| July 5, 2010 | PanhandleA C to PanOakMid double circuit 345kV line (PanhandleA C to Tesla) | Cross Texas |
| July 5, 2010 | PanhandleB A to PanhandleA C double circuit 345kV line | Sharyland |
| July 5, 2010 | Open | |
| July 26, 2010 | Tesla to Central C (Combined Application) PanOakMid to Central C double circuit 345kV line (PanOakMid to Clear Crossing portion; Clear Crossing to Central C portion) PanhandleA C to PanOakMid double circuit 345kV line (Tesla to PanOakMid) | ETT |
| July 26, 2010 | McCamey C to McCamey A single circuit, double circuit capable 345kV line | LCRA TSC |
| July 26, 2010 | West A to Central D single circuit, double circuit capable 345kV line Central D to Divide single circuit, double circuit capable 345kV line Central E to Central D single circuit, double circuit capable 345kV line | WETT |

3. The Parties agree that because Staff must retain flexibility to recommend changes to the schedule based on considerations related to P.U.C. SUBST. R. 25.174(c)(6) and Project No. 34577,¹ Staff may file a petition to modify the schedule approved by the Commission in this docket without violating this Agreement. No party waives the right to object to modification of the schedule in a future docket by joining this Agreement. In addition, this Agreement does not prevent the

Commission from making changes to the schedule on its own motion or for good cause shown by that of an entity other than Staff.

4. The Parties contemplate that this Agreement, including the attached Proposed Order, will be approved by the Commission. In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other Parties written notice within 20 calendar days of the date the Commission files the order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.
5. This Agreement is the final and entire agreement between the Parties regarding the matters addressed herein and supersedes all other communications among the Parties or their representatives with regard to the subjects contained herein, and this Agreement binds the Parties' successors and assigns.
6. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.

EXECUTED by the Parties by their authorized representatives designated below.

Date: June 25, 2009

Proceeding to Establish Policy Relating to Excess Development in Competitive Renewable Energy Zones, Project No. 34577.

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