PROJECT NO. 31852

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

ORDER ADOPTING NEW §25.174
AS APPROVED AT THE DECEMBER 1, 2006, OPEN MEETING

The Public Utility Commission of Texas (commission) adopts new §25.174, relating to Competitive Renewable Energy Zones, with changes to the proposed text as published in the September 9, 2006, issue of the *Texas Register* (31 TexReg 7209). The new rule will implement Senate Bill 20, 79th Legislature, 1st Called Session (2005) (Senate Bill 20), which amended Public Utility Regulatory Act (PURA) §39.904, relating to the Goal for Renewable Energy. The new §25.174 will provide procedures for the establishment of Competitive Renewable Energy Zones (CREZs) and for starting the process of siting and constructing transmission to facilitate delivering to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in Texas. This new rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 31852 is assigned to this proceeding.

Comments were received from AEP Central Company, AEP Texas North Company, and Southwestern Electric Power Company (collectively, AEP); Celanese, Ltd. (Celanese); CenterPoint Energy Houston Electric, LLC (CenterPoint); CPS Energy; Denton Municipal Electric (Denton); the Electric Reliability Council of Texas, Inc. (ERCOT); FPL Energy, LLC (FPL); Horizon Wind Energy, LLC (Horizon); State Representative David Swinford; Texas Parks and Wildlife Department (TPWD); Lower Colorado River Authority and LCRA Transmission Services Corporation (LCRA); Reliant Energy (Reliant); Shell WindEnergy, Inc.

(Shell); Southwest Power Pool, Inc. (SPP); Texas Industrial Energy Consumers (TIEC); Texas Wind and Wildlife Alliance (TWWA); TXU Electric Delivery Company (TXU Delivery); TXU Generation Company LP, TXU Energy Retail Company, LP, and TXU Portfolio Management Company, LP (collectively, TXU Competitive); West Texas Wind Energy Consortium; the Wind Coalition; and Xcel Energy Services, Inc. (Xcel). Reply comments were received from AEP; Airtricity, Inc.; ERCOT; Floydada Economic Development Corp.; Horizon; ITC Grid Development, LLC; King Ranch; TIEC; TXU Cities Steering Committee (Cities); TXU Delivery; Reliant; TXU Competitive; and the Wind Coalition. The commission also received letters from 242 individuals.

Most of the commission decisions effectuating a CREZ will occur in two types of orders. The first will be the order at the conclusion of a CREZ docket described in subsection (a) of the new rule. The second will be the certificate of convenience and necessity (CCN) order for transmission improvements related to the CREZ. To facilitate the discussion of the various issues raised in comments, the following narrative briefly describes how the commission envisions the CREZ process.

The CREZ Docket

In the CREZ docket, the commission will determine the zones. The evaluation will take into account the factors listed in PURA §39.904(g), including, but not limited to: sufficiency of renewable energy resources and land areas to develop generating capacity from renewable energy technologies; the level of financial commitment by generators for each potential CREZ; and the construction of transmission capacity necessary to deliver to electric customers, in a

manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies.

The commission may sever its consideration of potential zones into one or more separate dockets. Evaluating potential CREZs that would be connected to the Southwest Power Pool (SPP) may require a separate docket in order to ensure adequate time to address issues involving SPP's Open Access Transmission Tariff (OATT) as approved by the Federal Energy Regulatory Commission.

In assessing the level of financial commitment by generators, the commission will look at existing development, signed and pending interconnection agreements (IAs) for units not yet in service, fees paid by generators for interconnection studies, executed leasing agreements with landowners, voluntary letters of credit assuring the developer's intent to build in the CREZ, and other factors for which parties have provided evidence as indications of financial commitment.

A CREZ order will, among other things, identify a set of transmission improvements and the geographic zone where the commission intends for the renewable development to occur. Each new or upgraded line will be identified by voltage level, and by where the line will connect to the existing grid. Some of the transmission improvements may not be in close proximity to the intended development, and may serve purposes in addition to facilitating renewable energy development in the zone. The order will also include an estimate of the maximum generation capacity that the CREZ can accommodate once the improvements identified in the order are in service.

The CCN Docket

Not later than one year after the commission issues the CREZ order, the TSP or TSPs providing transmission service in or to a CREZ shall file applications for all required CCNs for transmission facilities identified in the CREZ order. However, after detailed study, the transmission utility may propose modifications to the parameters included in the CREZ order if its study reveals alternatives that would reduce costs or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate.

After the CCN application is filed, developers must post a letter of credit or other collateral to an amount equal to 10% of the developer's pro rata share of CREZ costs. The commission may reconsider the CREZ designation or take other appropriate action if a developer fails to meet this requirement.

Generator priority

If it determines that the aggregate level of renewable energy for a CREZ exceeds or will soon exceed the maximum level of renewable capacity specified in the CREZ order, the commission may open another docketed proceeding to limit interconnection and/or establish dispatch priorities, taking into account indicators of financial commitment provided by generators and other factors.

Comments on questions posed by the commission

1. *Financial commitments by generators.* Proposed subsection (b)(4)(A) allows generators to indicate interest in a potential CREZ by posting non-refundable deposits of different amounts at different stages. Are the amounts large enough to indicate a sufficient degree of commitment by a generator to assist the commission in designating CREZs and granting certificates of convenience and necessity for transmission lines related to CREZs? If not, how large should the requirement be?

The Wind Coalition and FPL said the amounts specified in the rule for the Progressive Financial Commitment (PFC) – $6,100 per MW of generating capacity over the three stages – were sufficient. The Wind Coalition said the deposits should serve two purposes: to provide the commission with some indication of interest that developers have in various candidate CREZ areas, and to ensure that wind power developers are committed to the development of their generation projects if the transmission is built. The group supported the distribution of the PFC commitments ($100 per MW during the CREZ proceeding, $2,000 per MW after the CREZ order, and $4,000 per MW after approval of the CCN applications), and said it would be significant enough to encourage developers to make the next level of commitment after the CCNs are granted, but before the decision to build the transmission is made. However, the group also called for the rule to contain a clear, defined standard for what would be regarded as a sufficient degree of financial commitment.

TXU Competitive, however, said that $6,100 per MW was not a sufficient level of financial commitment. They proposed that the commission set a higher amount and, if the generator seeks long-term congestion revenue rights (CRRs), require the amount as a one-time payment. TXU

Competitive also said the rule is too vague with regard to the specific financial commitments expected, because except for the PFC option, there was no per-MW deposit amount specified. LCRA did not comment on any specific level of requirement, but said the amount needs to be high enough to constitute a material amount of "sunk cost" should generators decide not to proceed.

Horizon proposed that the financial commitment be no less than a $25,000 cash deposit per MW of projected installed capacity at the proposed wind facility, all to be made during the CREZ proceeding. The first $150,000 of each deposit would be refundable only if the commission determined that the area would not be a CREZ, the zone were designated a CREZ but later deemed to be not viable by the commission, or the developer encountered an unanticipated problem with the development such as a regulatory or environmental issue that materially impacts the economic benefits associated with the particular wind development. Horizon argued that any deposit should be substantial enough to demonstrate that the parties proposing to build the project have the capability to do so and are committed to making a given project happen. In its reply comments, Cities said the financial commitment should be at least as large as the amount proposed by Horizon, and agreed that the deposits should be applied towards transmission studies related to the specific challenges of integrating a large quantity of wind generation into the ERCOT system, quantification of environmental and rural economic benefits, and deliberative polls.

Shell agreed with the $25,000 per MW standard proposed by Horizon, but said the first $250,000 should be used to compensate ERCOT for transmission studies and any remainder should be

given to TPWD. The cash deposit would be non-refundable unless the commission determines that an area will not be a CREZ, the commission determines a CREZ is no longer viable, or there is an unanticipated problem with the development such as a regulatory or environmental issue that impacts the economic benefits or feasibility of the proposed development. Shell also proposed a "fast track" priority in designating a CREZ when developers committed more than $50 million for a particular area.

Cities agreed with TXU Competitive and other parties that the level of non-refundable deposits proposed under the new rule was not large enough to indicate a sufficient degree of commitment by renewable generation developers. Cities said their primary concern is that if generators fail to honor their development commitments, the transmission project would no longer be necessary but ratepayers would still have to pay for the construction and administrative costs incurred by ERCOT and other parties who planned and built the new transmission facilities.

TIEC said neither of the mechanisms included in the proposed rule was adequate, and instead proposed an auction in which developers would offer cash deposits to reserve a certain amount of capacity on the expanded transmission for the CREZ. TXU Competitive also raised concerns with both the PFC approach and the CRR approach, saying the subsection overall was vague with regard to the financial commitments expected from renewable resources. It said the PFC approach increased cancellation risk, which is the sort of uncertainty the CREZ paradigm was designed to avoid.

TIEC also said any money advanced by a generator to demonstrate financial commitment should be used to lower the amount of money that consumers have to pay for transmission, a position Cities supported in its reply comments. The Wind Coalition disagreed, however, and said applying generator deposits to transmission costs as proposed by TIEC was participant funding and not authorized by the Legislature. TXU Delivery said in its reply comments that participant funding had not been sufficiently vetted in this rulemaking to be included in the final rule.

Xcel said it was not clear how the provisions of proposed subsection (b)(4) would apply outside of ERCOT in parts of Texas served by SPP. Xcel noted that interconnection in the SPP is based on the FERC Large Generator Interconnection Procedures that currently have no mechanism for managing nonrefundable deposits for the purpose of establishing a placeholder for developing a CREZ, nor does the rule place SPP in an oversight or administrator role like it does for ERCOT. Xcel recommended that the rule exempt non-ERCOT portions of Texas from this provision or apply some alternative mechanism that was consistent with FERC rules.

AEP supported the PFC process, saying it should require a high financial commitment from renewable generators. The deposit amounts should be demonstrative of the cost effectiveness of the transmission construction and should bear a reasonable relation to the transmission infrastructure investment, the company said.

The PFC mechanism along with the CRR escrow mechanism included in the proposed rule were both intended as means of demonstrating financial interest in the absence of IAs in ERCOT. In recent months, however, wind developers have executed IAs for about 1,560

MW of new wind capacity in ERCOT, dispersed across an area from Far West Texas to Central Texas, and from the southern Panhandle to Abilene. In the SPP region, developers have IAs for nearly 1,000 MW of wind power in the northern and western Panhandle, with another 2,100 MW under study. Another 15,400 MW is in the interconnection study queue at ERCOT. The number of IAs and the associated megawatts of renewable generation to date in ERCOT and in the SPP area persuade the commission that a complicated new mechanism to evaluate financial commitment by generators is not necessary.

The commission notes the concerns raised by TXU Competitive with respect to the risk of project cancellation and agrees that such risk should not be taken needlessly. Cancellation risk is reduced when developers have posted significant security deposits as required for IAs, and if such deposits exist, further demonstration of financial commitment is unnecessary. The commission incorporates a simplified version of the PFC, as an optional measure for a developer to demonstrate commitment. The commission will give appropriate weight to all available indicators based on the facts before it in the contested case(s).

The commission finds it appropriate to establish a subsequent financial commitment 45 days after the CCN application is filed. The $25,000 per MW level proposed by Horizon and Shell is too onerous for smaller developers, however. The commission finds that a more reasonable level is 10% of the developer's pro rata share of CREZ capital costs and CCN preparation costs, and revises the proposed rule accordingly. The commission may

reconsider a CREZ designation, or take other measures it deems appropriate and consistent with statute, if a developer fails to meet this obligation.

The commission disagrees with the Wind Coalition, TIEC and others with respect to how deposits, which may consist of cash, a letter of credit or other collateral, are used. The commission finds it reasonable to treat these deposits similar to IA security: they would be held by the transmission utility, and refundable except for amounts used to compensate the transmission utility for expenses incurred in the event the developer defaults. The commission accordingly changes language from the proposed rule to reflect this purpose.

2. *Prioritization of dispatch*. Proposed subsection (b)(4) provides for assigning dispatch priority to renewable generators located in a CREZ if they fulfill all financial requirements arising from that paragraph. Please explain why this provision is better or worse than subsection (b)(3), which uses deposits reserved for the future purchase of CRRs. In particular, please comment on each alternative's consistency with PURA Chapter 35 and ERCOT protocols.

Most comments on this question addressed two issues: the technical feasibility of priority dispatch, and whether it was legally permissible under PURA. ERCOT noted that different generators in a CREZ would probably have different shift factors – *i.e.*, different degrees of impact on a given transmission bottleneck – depending on each unit's location. (For example, a unit farther from the congested line would have less impact than a unit that was closer, so that a 10 MW reduction at the closer unit may have the same effect on congestion as a 20 MW

reduction at the farther unit.) ERCOT noted that if the real-time dispatch did not select the units with the best shift factors, the cost of energy dispatched in real-time could be more expensive.

ERCOT also pointed out that real-time energy deployments are determined for everywhere in the power region at the same time. Therefore, units inside a CREZ would be competing for dispatch not only with other units inside the CREZ, but with all units throughout the ERCOT power region. Dispatch prioritization procedures would need to address this aspect as well.

The Wind Coalition proposed a prioritization method that, it argued, addressed the issues raised by ERCOT and would be easy to implement. It would involve two runs of the security-constrained economic dispatch (SCED) software engine that will be used to price energy and deploy generation units in the ERCOT nodal market. The first run would weight the deployment of priority renewable resources vis-à-vis renewable resources without priority, and would be used to determine the output level for renewable resources. Prices, along with dispatch levels for all other resources, would be determined in the next run.

FPL, Horizon and Shell all supported priority dispatch. FPL noted that CRRs do not capture the value of lost RECs and tax credits, only the loss of energy revenues in the event of congestion-related curtailment. Shell said that while CRRs can evaluate level of commitment, CRRs cannot demonstrate their value as an investment.

CPS Energy, on the other hand, urged the commission to reject priority dispatch. Any priority created administratively and not determined by the market and the laws of physics, CPS Energy

said, would be inherently inefficient and would significantly interfere with efficient market outcomes. CPS Energy also said that an administrative "dispatch priority" would be highly inconsistent with the nodal market design and would require significant modifications to ERCOT software.

LCRA said that while other aspects of the PFC described in subsection (b)(4) are reasonable, prioritized physical dispatch is contrary to commission rules regarding congestion rights. LCRA supported specialized treatment of CRRs, as is currently being done with respect to the McCamey area, as an alternative to priority dispatch. LCRA said CRRs are already in the market, while prioritized physical dispatch is not defined in the proposed rule. LCRA said neither the current zonal market nor the future nodal market is designed to accommodate prioritized physical dispatch. If there was any congestion limiting export from the CREZ, LCRA said, resources outside the CREZ may be required to curtail significant amounts of output in order to maintain the dispatch priority of a single MW within the CREZ. LCRA said that this outcome is neither desirable from a societal point of view nor desirable to the resources with dispatch priority because congestion charges paid by the priority resource would likely be very high. LCRA said that if, on the other hand, flowgate rights were allocated, the resources within the CREZ that are allocated the flowgate rights would be hedged against congestion charges and could make the economic decision of reducing their output to benefit from flowgate payments when congestion costs are high or operating at their desired dispatch level and forgoing those profits.

AEP said neither process (CRRs nor dispatch priority) would adversely affect a renewable generator's right to transmission service. However, AEP said that the rule is too general in describing CRRs and there is no explanation of how CRRs would be valued. The company also said the rule failed to define "dispatch priority" and therefore could not compare the relative merits of CRRs versus priority dispatch. In its reply comments, however, AEP said significant issues arise in the rule because current ERCOT protocols and future nodal market design do not provide for prioritized dispatch.

TXU Competitive said dispatch priority is not consistent with current or future ERCOT market design. TXU Competitive said that in the nodal market design, wind generating units will be dispatched at maximum output whenever possible because of their lower operating costs; therefore wind generation will inherently have dispatch priority over other generation types. TXU Competitive urged the commission to standardize the means by which renewable resources will demonstrate financial commitment and allow them to obtain CRRs for new transmission in CREZ. They said the current rule language is vague in regard to the level and type of financial commitment and to the type and lifespan of CRRs.

TIEC said that proposed §25.174(b)(4), which includes the dispatch priority provisions, does not adequately capture the financial commitment test required by PURA. On the other hand, TIEC added, allowing the purchase of CRRs under the mechanism in §25.174(b)(3) does not demonstrate true financial commitment either. TIEC reiterated that regardless of the approach used, customers should not be left to bear the entirety of the costs associated with building CREZ facilities. Moreover, TIEC noted that both alternatives raise questions with respect to the

requirement in PURA that "The Commission shall ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service…" (PURA §35.004(b)). The group also said it did not believe the Legislature intended for a CREZ to be developed exclusively for renewable generation.

Cities said it agreed with the comments of TIEC, CPS, LCRA, TXU, and others that the new rule should not establish artificial dispatch priorities that unduly favor renewable generation projects, adding that such treatment would be neither necessary nor consistent with ERCOT market design principals and transmission open access regulations. Cities agreed with TXU Competitive, pointing out that the very low variable operating costs of most renewable energy projects will dictate that such projects will be dispatched when available. Cities said they believe that there are already significant incentives in place to encourage the development of renewable energy projects through other provisions of the CREZ rule and through the renewable energy targets mandated under §25.173 of this title (relating to the Goal for Renewable Energy). Given these existing incentives and the potential for related market inefficiencies and transmission access conflicts, Cities urged the commission to remove the proposed dispatch priority rights for renewable generators from the new CREZ rule.

TXU Delivery, in its reply comments, noted the opposition to and reasoning against dispatch priority. Agreeing that priority dispatch would not be consistent with current and future market design, TXU Delivery said a prioritized dispatch could also limit ERCOT's ability to adjust generation in response to system reliability issues. TXU Delivery recommended that the commission carefully consider the operational issues associated with the development and

administration of dispatch priority and the departure that this rule might make from established market structure and operation.

The commission notes that main argument in favor of priority dispatch for renewable resources in a CREZ is to prevent the "piling on" phenomenon seen in McCamey and discussed by the Wind Coalition. Physical priority dispatch is not the only means of addressing this problem, however. Development in excess of a given threshold can be deterred through financial means as well as physical means. The commission agrees with FPL that PURA gives the commission latitude with respect to setting the terms and conditions of interconnection in ERCOT. The commission finds, however, that the solution to overbuilding in a CREZ is best left to a separate proceeding to be initiated after it has been determined that the maximum level of renewable capacity specified in the CREZ order for a zone has been or may soon be exceeded.

The commission agrees that the two-pass SCED method proposed by the Wind Coalition would be feasible technically. The commission concludes, however, that the details required to implement this or any other systematic prioritization scheme for the ERCOT power region should be worked out among stakeholders in the ERCOT protocol revision process. The commission therefore declines to adopt such a mechanism in this rule.

3. *Timeliness of completing upgrades.* Proposed subsection (a)(5)(E) provides that in its final CREZ order, the commission may impose reporting requirements and other measures to ensure timely completion of CCN applications and construction upgrades.

What specific measures would be appropriate for the commission to consider in a final order, and should they be specified in this rule?

AEP, CenterPoint, TXU Competitive, TXU Delivery, and Cities stated that the commission should utilize the existing transmission construction reports and monthly construction progress reports. TXU Delivery further suggested that the commission could, if it deemed necessary during a CREZ designation proceeding, include provisions in its order that would result in a status update on the preparation of a CCN application or other related matters.

The Wind Coalition stated that the rule should specify that the existing construction report is to be filed for all CREZ transmission construction, regardless of whether the reporting rule by its terms was applicable.

The commission agrees that the existing reporting requirements may be sufficient to keep the ordered transmission upgrades moving in a timely manner. Nevertheless, it retains and clarifies language in the proposed rule giving the commission the flexibility to order additional reporting requirements if it deems them useful.

FPL stated that the commission should prepare a detailed procedural schedule in which certain milestones are set forth and should identify the entity or entities that will be responsible for ensuring the milestone deadlines and other reporting requirements are met.

TXU Delivery stated in its reply comments that FPL's recommendations were inconsistent with the manner in which PURA and the commission's rules require transmission facilities to be certificated. TXU Delivery further stated that the commission should not attempt to establish deadlines and reporting that will operate to restrict and inhibit a utility's ability to complete the application as desired.

LCRA proposed two possible milestones for reporting progress on CCN applications. The first milestone would be the completion of preliminary routing and the research necessary to identify the landowners along the preliminary routes; a second milestone would be the open houses or public meetings.

In its initial comments, AEP stated that it is not necessary to include language in the final order to encourage the constructing utility to meet the estimated schedule. In its reply comments, however, AEP stated that it is not necessarily opposed to imposition of milestones, as suggested by LCRA and FPL, to monitor progress towards the completion of activities such as preliminary routing analysis, affected landowner identification, and public hearings/open houses.

AEP also stated in its reply comments that there are numerous other circumstances beyond the utility's control that impact a project schedule such as weather delays, material shortages, construction labor shortages, environmental construction limitations (*i.e.*, bird nesting season, required bird count, etc.), historical artifact workarounds, delays obtaining easements, and other land use issues.

The Wind Coalition stated, and Horizon and Shell agreed, that the main issue is to ensure that transmission utilities are given clear authority to prudently plan and prepare for CREZ related transmission improvements with confidence that prudent expenditures will be included in the rate base even if the transmission projects are altered or not completed as additional information is received. The Wind Coalition further suggested that the commission should identify a target in-service date in the CREZ designation order that may be taken into account in a general rate case to facilitate reporting of progress, and that the commission should require an oral update from the project manager every six months in a commission open meeting.

TXU Delivery replied that Wind Coalition's incentive for timely completion of transmission lines is entirely too vague to provide any utility with reasonable assurance of any manner of incentive regarding potential preferential treatment during a future rate proceeding. TXU Delivery explained that the issue of performance-based ratemaking is a significant issue of far-reaching policy implications that should not be introduced in this state through vague principles of limited and questionable application.

TXU Delivery further stated that the Wind Coalition's recommendation does not appear to be a reasonable utilization of limited utility and consultant resources. There are a number of facets of CREZ transmission facilities that will need to be established during the CREZ designation process which include voltage, number of circuits, capacity, and end points — all of which can significantly influence CCN application preparation.

The commission finds that setting a targeted in-service date for CREZ transmission as suggested by the Wind Coalition is reasonable, but that the timeline should be determined in the CREZ docket rather than by rule. The commission declines to prescribe penalties in the rule that would punish the TSP if the target were met. The need and form of such measures are more appropriately decided in a contested proceeding other than the CREZ docket.

Xcel stated and AEP agreed that the commission should establish a policy that provides incentive for the timely completion of applications for CCNs and construction upgrades, as opposed to imposing burdensome reporting requirements or punitive measures. Inclusion of construction work in progress (CWIP) in the rate base for transmission investment as authorized in PURA §39.203(3) for ERCOT utilities should be allowed for all new transmission investment built primarily to accommodate CREZ activity.

The Wind Coalition replied that it is generally supportive of further methods of assured utility cost recovery from ratepayers that will facilitate expedited building of new transmission for CREZs.

Reliant encourages as much disclosure on project status as prudently possible.

PURA already exempts transmission ordered as a result of CREZ designation from having to prove that it is used and useful. The commission does not believe that further special treatment, such as mandatory use of CWIP, is necessary.

4. *Length of process*. The proposed rule establishes deadlines for a final CREZ order, and for utilities to file a CCN application. Please identify steps in the CREZ process that can be shortened or consolidated.

FPL, West Texas Wind Energy Consortium, and 242 individual commenters suggested that the commission designate certain CREZs in this rule. FPL went on to explain that the commission has the authority to designate the CREZs in this rule and that all of the elements needed for the commission to fulfill the requirements in the proposed rule for a final order designating a CREZ will already be developed for most areas of the state with existing renewable energy facilities by the time a rule is adopted. FPL also noted that if the commission fails to designate a single CREZ until sometime in 2007, it is unlikely to influence the current PTC-development cycle decisions of wind energy generators in favor of Texas sites.

FPL asserted that the expedited rulemaking would address the known backlog of areas suitable for CREZ designation through a quicker and less costly proceeding to designate CREZs whose approval is almost a foregone conclusion and would allow the first contested case to focus on CREZs with substantial unrealized potential for renewable energy resources.

TIEC disagreed with the proposal of the West Texas Wind Energy Consortium and FPL that the commission should designate specific CREZs in this rulemaking proceeding. TIEC noted that this rulemaking is the appropriate forum to develop the applicable factors necessary to assess

whether a particular area should be designated a CREZ; it is not the appropriate forum to make factual findings regarding the merits of any particular CREZ.

Similarly, ERCOT expressed its concern with designating CREZs in this rulemaking or another expedited rulemaking as proposed by FPL without the benefit of the results of the study that ERCOT is currently performing. Results of study may show different solutions than were indicated in more limited studies performed several years ago or in simple point-in-time transfer studies.

Horizon stated that designating a CREZ in this rulemaking would bias the result in favor of the proponent of that particular CREZ to the detriment of other parties and that other parties may have participated in this rulemaking project if it had been noticed as a CREZ designation project. Furthermore, Horizon stated that to allow some CREZs to be designated in this rulemaking while others would be subject to the contested case process would be discriminatory and directly contrary to the plain language of PURA.

The Wind Coalition replied that if CREZs are to be designated by rule, then it should be for all CREZs that meet clearly defined fast-track criteria, not just for some CREZs.

The Wind Coalition suggested that parties should be required to nominate a CREZ only though the ERCOT stakeholder process, so as to ensure the maximum "vetting" of the issues by not only the relevant stakeholders but also by an independent third party with capability to perform the requisite studies.

The commission declines to designate any CREZs in this rulemaking project. CREZs will be designated through a contested case proceeding where evidence can be presented and the commission can evaluate the statutory criteria for each zone.

In an effort to expedite the process for development of CREZs, AEP suggested that the commission prioritize certain candidate zones deemed necessary for expedited commission consideration and sever them from the remainder of the identified candidate zones and place them on a fast-tracked docket that could be heard directly by the commission, rather than referred to the State Office of Administrative Hearings. AEP further suggested that once candidate zones have been prioritized, CCN applications can also be prioritized and fast tracked.

Reliant stated that it does not oppose using a "fast track" process for certain candidate CREZs as long as the fast track process still allows for due process for affected parties.

TXU Competitive supported the expedited process for the designation of CREZs, but was concerned that any effort to expedite designation of CREZs without proof of proper financial commitments would be contrary to the legislative intent of Senate Bill 20 and would ultimately have negative impacts on the ERCOT wholesale market.

TXU Competitive also cautioned that the commission should make distinctions regarding fast track treatment only within each CREZ designation contested proceeding when it has the benefit

of the facts and circumstances before it and can make full use of the procedural tools available within the case.

FPL suggested that if the commission chooses to utilize contested cases to designate CREZs, the contested case should be processed in five months, but it should retain in the rule the proposed provision for good cause exceptions.

TXU Competitive also noted that the designation of a CREZ will not affect any particular wildlife habitat, so the provision in the proposed rule allowing for consideration of TPWD comments only invites unnecessary delay.

TIEC suggested an alternative to contested cases would be to more fully develop the planning aspects of the CREZ zones through ERCOT.

TIEC suggested that several CREZ applications could be reviewed in each proceeding. Cities agreed with this suggestion. TXU Competitive recommended that the proposed §25.174(a) be modified to provide that the contested case proceedings before the commission to address CREZ designations should be scheduled no more frequently than once every three years. Cities also agreed with this suggestion.

The commission may fast track and/or sever certain CREZs from the main contested case as the facts are evaluated.

Horizon stated that gauging a CREZ based on SGIAs or completed feasibility studies is patently unfair when one CREZ has access to transmission and can readily achieve these benchmarks, while another candidate CREZ has access to transmission and no ability to interconnect or to initiate a feasibility study with ERCOT.

Shell advocated implementing a "fast track" approach for CREZs that demonstrate a level of financial commitments exceeding $50 million for at least 2,000 MW of total capacity in the proposed CREZ.

Horizon stated that it substantially agrees with the comments of the Wind Coalition targeted to streamline the CCN dockets that will result in a final order designating a CREZ. However, Horizon did not agree with the Wind Coalition suggestion to equate the signing of an interconnection agreement with financial commitment.

Horizon further stated that if any CREZ is put on a fast track, any project should be given consideration if it has posted the entire $25,000 deposit and that a project for which a feasibility study has been completed, or an interconnection agreement has been signed, should not be given preference over a project that as posted the $25,000 deposit.

Financial commitment is one of several statutory criteria that the commission will evaluate in making its determination, and this may also be a basis for determining whether to fast-track a set of potential CREZs. Because other factors such as landowner cooperation may

be relevant in conjunction with financial commitment, however, the commission declines to establish financial benchmarks in the rule.

ITC suggested that one option for reducing steps in the CREZ process would be to include all upgrades required for a CREZ, both the transmission line(s) to potential markets and all the system upgrades needed to accommodate those new lines, in one proceeding, including approval of cost recovery.

The commission notes that preparing the detailed studies that are needed to site a transmission line and to evaluate all of the system upgrades needed to accompany the CREZs will take time. Including them in one proceeding would likely slow that one proceeding down significantly; therefore, the commission declines to incorporate ITC's suggested change.

FPL proposed that the 12 months before a CCN application is filed be shortened to nine months, retaining the provision for good cause exception.

TXU Delivery, in its reply comments, stated that many of the activities cannot be accomplished in shorter periods of time simply by working harder. TXU Delivery stated that FPL's recommendation to reduce the time period for the preparation of a CCN application from one year to nine months should be rejected. TXU Delivery explained that establishing a nine month period in this rulemaking for the preparation of a CCN application, without the elimination of

significant notice requirements and commission routing requirements, would simply result in the creation of a date that in all reasonable likelihood would never be met.

AEP also stated that the proposed one-year time period for filing all CCNs for transmission facilities is the minimum amount of time required and that it is an aggressive schedule that utilities will have a difficult time meeting.

CenterPoint and AEP stated, and Wind Coalition agreed, that an application for a CCN for transmission facilities identified to serve a CREZ should be processed within six months of submitting the application. This time frame, they stated, is consistent with the same deadlines used for applications addressing transmission facilities designated as critical to reliability by ERCOT.

TXU Delivery suggested that in order to expedite the construction of CREZ transmission facilities, the adopted rule should specify that such projects are an exception to the provisions of the ERCOT planning charter.

ERCOT did not agree with TXU Delivery's suggestion. ERCOT stated that it does not believe it is advisable to create an exception to an ERCOT procedure in the commission's rules. ERCOT recommended that ERCOT and market participants have the opportunity to weigh the potential benefits and drawbacks of changes to these transmission lines before such changes are adopted. ERCOT added that it can implement expedited procedures for this review.

The commission agrees with ERCOT with respect to providing no exception to the ERCOT planning charter. It further finds that a 12-month deadline for a transmission utility to prepare its CCN application is a reasonable starting point; however, the commission retains the right to adjust this requirement if the facts warrant.

AEP and TXU Delivery suggested that the routing evaluation process be streamlined by requiring a utility to provide only newspaper notice for public meetings for public input on the preliminary routes. AEP asserted that providing newspaper notice for the front end of the routing evaluation process will not adversely impact the due process of those landowners affected by the routes filed with the commission for consideration because they will still ultimately be provided notice and an opportunity to be heard before the commission. TXU Delivery explained that the time and expense for transmission utilities to determine the tax roll property owners of each property crossed by a preliminary routing link can be extensive. Furthermore, it said, the environmental assessment and routing study are likely to be placed on hold while the tax roll research is performed.

The Wind Coalition and AEP agreed with TXU Delivery that procedures should be waived as they concern providing direct mail notice for public meetings to landowners affected by the preliminary routing process for CCN transmission line applications under P.U.C. Procedural Rule §22.52(a)(4). AEP noted that experience in past CCN applications has been similar to TXU Delivery's in that noticing affected landowners by direct mail has not always yielded greater attendance at public meetings.

The rule proposal that the commission published for comment related to the substantive rules for designating CREZs. It did not propose amendments to the procedural rule relating to transmission CCNs. The comments from TXU Delivery, AEP, and the Wind Coalition are beyond the scope of this proceeding. In addition, the commission is not prepared now to limit the ability of landowners to participate in this very important process of siting a transmission line. The commission finds that it is prudent to have landowner input earlier in the process rather than later. Inadequate notice to landowners early in the process may result in delays in identifying environmental or community concerns that have a legitimate impact on transmission routing.

TXU Delivery also suggested that the commission modify §25.101(c)(5) of this title (relating to Certification Criteria) to provide exceptions for certain CREZ transmission projects. TXU Delivery stated that by modifying the 230 kV limitation in the above project descriptions for facilities to serve CREZs, the commission can increase the likelihood that certain CREZ transmission projects could be constructed without the need of a formal CCN application proceeding.

AEP agreed with TXU Delivery that proposed rule provide a modification for CREZ projects, to the commission's existing exempt CCN provision in §25.101(c)(5), but would raise the voltage limit to 765kV rather than 500 kV as suggested by TXU Delivery.

The commission declines to add to the new rule any provision that would provide special CCN exemptions beyond those identified in PURA for this purpose.

The Wind Coalition suggested several ways to shorten the CREZ process. First, it suggested allowing utilities to start on CREZ CCN preparation work immediately. Second, the commission could reward utilities for timely filed CREZ CCNs. Third, the group recommended using procedural tools like severance only in a manner that does not inhibit approval of other potential CREZ zones. Fourth, the Wind Coalition recommended letting existing constraint relief work proceed apart from the CREZ process. Finally, the group said, the commission could shorten the open season periods established in the rule to 30 days.

TXU Delivery stated that inclusion of target in-service dates for the completion of transmission facilities at the time of CREZ designation will send inappropriate signals to market participants about the actual completion date of such facilities.

The commission will consider the various options recommended by parties in the context of specific cases, as there may be circumstances in which some of the measures would create complications impossible to anticipate in this rulemaking.

Comment on specific subsections

§25.174(a)

AEP Companies noted that the proposed rules do not determine which entities have the burden of proof regarding CREZ designation, and recommended that specific procedures for conducting CREZ contested cases be specified. AEP Companies also recommended that references to "upgrades" be changed to "improvements" to better describe construction of new and upgraded

old facilities, as well as to be more consistent with other PUC rules. ITC Grid Development suggested clarifying the term "upgrades" to separate new transmission from improvements of existing transmission, and that new transmission development be awarded on merit rather than proximity.

The commission expects that the initial proceedings to designate CREZs will result in a number of competing proposals for areas to be designated as CREZs. In the context of the legislative mandate to designate CREZs, it is difficult to see how the commission could assign the burden of proof among competing CREZ proposals or how doing so would assist the commission in making its determination. The commission will weigh the relevant evidence that is presented in the cases and decide which area or areas should be designated as CREZs.

ERCOT requested that it be given six months notice prior to any future study required of ERCOT relating to CREZ designation. ERCOT also noted its concern that its current report may not contain all information needed by the commission, especially location-specific information regarding maximum levels of renewable energy in a given CREZ.

PURA §39.904(k) requires ERCOT and the commission to study the need for CREZs every two years. The commission intends to use these biennial reports as the basis for determining the need for additional CREZs after 2007. If, upon receipt of the biennial report from ERCOT, it finds that another CREZ may be in the public interest, the commission will set an appropriate timetable for additional study at that time, taking into

account current needs and circumstances as well as the time required by ERCOT to conduct its study. No change to the rule is necessary.

Xcel asked for specific language allowing opponents of CREZ designation to submit evidence it deems appropriate. Xcel also requested that separate contested cases be conducted for CREZ designation outside ERCOT. SPP and ITC Grid Development agreed that ERCOT and non-ERCOT CREZ designation should occur in separate contested cases. The Wind Coalition agreed that SPP concerns about non-ERCOT application of the rules should be addressed, and suggested that many of the programs in the rule can be administered by ERCOT for extra-ERCOT areas. TIEC asked that any non-ERCOT CREZ rules be carefully considered in light of FERC rules and OATT requirements.

In a contested case, affected parties already have the right to intervene and provide comments and evidence in response to a proposed action, so the specific language allowing opponents to do this is unnecessary. As discussed above, when the contested cases are in front of the commission, the commission may sever certain candidate CREZ proceedings. At that time, the commission will consider whether to sever the ERCOT CREZs from non-ERCOT. It is also possible for the staff to file separate proceedings, if circumstances warrant.

SPS suggested that specific language regarding the sharing of costs of CREZ transmission outside ERCOT with load inside ERCOT be added to the rule, so as not to burden customers in regions with high wind capacity, but low load with excessive transmission costs. SPS also noted

its concern about the possibility of multiple rate cases related to recovery of CREZ related transmission costs, and asked that CREZ designation also address recovery of costs. Reliant replied that cost division is better handled through the standard regional transmission planning processes.

The commission does not have adequate information to address this issue in this rule, in particular, since only SPS commented on this issue. This issue would be more appropriately addressed in a CREZ proceeding or CCN proceeding relating to a transmission line that imports power into ERCOT.

Celanese, requested clarification regarding the role of non-renewable generation in the process. Specifically, Celanese suggested that it be clarified that non-renewable generation may interconnect through transmission facilities constructed for a CREZ, but that non-renewable generation would not be part of the processes to assign transmission rights for allocated renewable dispatch capacity within the CREZ. AEP Companies agreed that CREZ related transmission planning should not rule out non-renewable interconnection.

The commission agrees with Celanese and AEP. While the objective of a CREZ is to increase the amount of renewable resources on the grid and provide necessary transmission for those resources, ERCOT will include existing and anticipated fossil-fueled units in its study of potential CREZs, and the commission may take all resources into account when evaluating the choices and seeking transmission solutions. The commission's mandate is to encourage renewable energy development by placing transmission

infrastructure in places advantageous to renewable energy generation resources in a manner that is most beneficial and cost-effective to the customers. Physical access to the transmission network must remain open to any technology, however.

Horizon argued that all proposed CREZs be treated procedurally identically, regardless of the presence or absence of existing transmission in the proposed CREZ. Horizon also recommended that the rule contain contested case procedural schedules and further delineation of financial and other requirements, and allow for competitively sensitive information to be provided on a confidential basis. The Wind Coalition also believed standard confidentiality protections should be extended to sensitive information submitted by ERCOT and parties.

The commission notes that the presence or absence of transmission in a certain area will most likely affect the cost effectiveness of CREZ-related transmission improvements. As is noted above, the rule proposal that the commission published for comment related to the substantive rules for designating CREZs. Procedural schedules and similar details are normally set in the docketed case itself, and the commission finds no need to treat a CREZ docket or a CREZ-related CCN docket differently in this regard, except where required by statute. The commission will treat all confidential information in accordance with its existing procedural rules.

TXU Competitive recommended that new CREZ designations be considered on a triennial basis, rather than "in subsequent years as needed," to reduce administrative burden. It also recommended extending the deadline for staff to initiate a contested case from five to thirty days

after ERCOT delivers its report, and that entities requesting a CREZ include specific information related to that nomination.

FPL suggested holding CREZ proceedings in all years, unless deemed unnecessary by the commission. FPL also recommended specific public notice methodology, and a specified 21 day intervention and CREZ proposal deadline for the contested cases. The Wind Coalition replied that all CREZ proposals should come through the ERCOT stakeholder process, rather than being initiated with the commission after the ERCOT report is complete. AEP Companies did not oppose FPL's proposed notice methodology.

The commission disagrees with the triennial timeframe proposed by TXU Competitive, but acknowledges its desire to reduce administrative burden. The need for a subsequent CREZ proceeding will be informed by the biennial reports already required of the commission and ERCOT under PURA §39.904(j) and (k). The commission declines to restrict its future options further than that, however. The commission also agrees with TXU Competitive that it may be prudent to allow more than five days before initiating the contested case. The five-day deadline is deleted from the rule. Nevertheless, the commission declines to establish a 30-day timeframe as recommended by TXU Competitive. The commission's intent is to complete its initial CREZ selection as expeditiously as possible, and notes that the process may move faster if the commission can explore technical issues with ERCOT, staff and stakeholders before ex parte restrictions are in place.

Moreover, the commission does not want to limit proposals originating from outside the ERCOT stakeholder process. Independent proposals may need additional time, which favors opening the docket and establishing a procedural schedule promptly. Parties proposing areas for CREZ designation should file information similar to the ERCOT report if they expect the commission to consider them alongside zones studied by ERCOT.

ERCOT suggested that subsection (a)(2)(B) be modified to state the potential production which could reasonably be achieved for each region. ERCOT also suggested additional language adding production potential and fuel savings due to the CREZs. SPS, ITC, and SPP recommended that ERCOT be required to consult with other RTOs and similar organizations in analyzing potential CREZs outside ERCOT. SPS also asked that a provision be added to allow entities to appeal or comment on the ERCOT reports. AEP Companies agreed that ERCOT should be required to consult other RTOs and ICTs.

The commission intends for ERCOT to use its professional judgment in deciding what information to include in its report. What is specified in subsection (a) is a minimum and not an exhaustive content list. The commission agrees that consultation with the affected transmission organization should be required in cases of CREZs outside of ERCOT, and makes the change suggested by SPS, ITC, and SPP. The commission notes that a contested case provides the venue for any challenge to an ERCOT report that any intervenor may wish to make, as suggested by SPS, and that no further change to the rule is necessary.

CenterPoint recommended that subsection (a)(2)(C) be modified to include identification of transmission improvements that will require a CCN. AEP Companies recommended striking subsection (a)(2)(D) and modifying subsection (a)(2)(C) to require "a description of the transmission system improvements necessary to provide transmission service to each CREZ and the aggregate of zones that share common transmission constraints." Similarly, ERCOT recommended that subsection (a)(2)(c) be modified to include descriptions of transmission upgrades required for service from "each region and reasonable combinations of regions to consumers."

TXU Delivery recommended that a description of nonrenewable interconnection requests near the CREZ be added to the ERCOT report. TXU Delivery also requested that the ERCOT report include specific technical information on required transmission facilities to serve the CREZ. AEP agreed with the logic behind TXU Delivery's proposals to address the need for more specificity. FPL recommended that a preliminary cost estimate for necessary transmission upgrades be included in the ERCOT report.

The commission finds that it is unrealistic to expect the ERCOT study to contain the degree of specificity sought by TXU Delivery and AEP. The purpose of that study is to provide enough information for the commission to compare options, select CREZs, and designate, in general terms, what transmission facilities are needed to serve the CREZs. More detailed planning will be required for the transmission facilities and most will require commission review in a subsequent CCN proceeding. Aside from the minimum requirements specified in the rule, the commission expects ERCOT to use its professional

judgment in deciding which factors are relevant, and what level of detail is required in its report. If the commission requires more information on any particular alternative, the commission will provide ERCOT specific direction during the CREZ docket or request the information from parties.

In response to FPL, the commission notes that the proposed rule already provides for a preliminary cost estimate from ERCOT for transmission. These estimates need not be exhaustively precise relative to the final actual cost. They only need to be sufficient to allow the commission to determine in the most beneficial and cost-effective transmission option.

AEP asked that the commission's intent regarding the role of CREZs outside the ERCOT footprint be addressed. AEP also recommended that the need to operate traditional synchronous generation within and among CREZs be addressed in subsection (a)(2)(E). ERCOT replied that such planning should be handled later in the process, once the potential CREZ locations have been narrowed by the commission. ERCOT also noted that the language offered by AEP presupposes the need for synchronous generation in all areas; and that this is an issue better addressed on a case by case basis. TXU Competitive noted on reply that additional clarification on interconnection of CREZs outside of ERCOT is needed, and recommended that interconnection should be based on geographic location, with assignment to the utility which serves that territory.

The commission agrees with ERCOT that CREZs involving synchronous ties with SPP or another RTO should be considered case-by-case, and possibly in a separate CREZ docket. The commission amends the rule to clarify that there may be more than one CREZ proceeding at a time, and it believes that this change addresses the issue. The new rule makes no change to other commission rules governing utility responsibility for transmission improvements.

LCRA proposed alternative language for subsection (a)(2)(C), and suggested that all references to "regions" and "zones" in §25.174(a)(2) be changed to specify "CREZ". ERCOT requested that the rule allow ERCOT until May 1, 2007 to provide an estimate of additional ancillary service capacity required for the 2006 CREZ report.

The commission agrees with the clarification recommended by LCRA. With respect to the ancillary services study, the commission finds that the report can be included in the procedural schedule that the commission will establish for the first CREZ docket, and modifies the rule to accommodate this change.

TPWD, the Wind Coalition, Horizon, and TWWA suggested expanding the language of §25.174(a)(3) to create voluntary guidelines agreed to by all stakeholders regarding environmental issues, through a process involving the Executive Director of TPWD or a TPWD-appointed committee, and suggested potential contents for these guidelines. TWWA also recommended that IAs be conditioned on TPWD advice regarding compliance with these guidelines.

FPL argued that the commission has no statutory authority over generation site selection or environmental issues related thereto, and so §25.174(a)(3) should be struck entirely, leaving current environmental management procedures in force. FPL and TXU Competitive noted that TPWD may participate in CREZ designation cases whether invited by this section or not.

On the other hand, King Ranch argued that a mandatory environmental impact study should be conducted in selection of generation sites in a CREZ.

The commission declines to add the language proposed by TPWD and TWWA. While the commission has no objection to voluntary guidelines developed under the leadership of TPWD, it would be inappropriate for one state agency to adopt a rule detailing the activities of another. As these guidelines would be voluntary, the commission finds that the rule language should be permissive rather than prescriptive, and should allow a high degree of flexibility for TPWD and the parties with whom it negotiates. Nevertheless, the commission recognizes that avian issues could be an issue in siting wind power. FPL and TXU Competitive recommend, in effect, that the commission's rules be blind to this reality, a suggestion that the commission rejects. The proposed language as worded appropriately allows avian and other environmental issues to be considered, and does so in a manner consistent with the commission's statutory authority and that of TPWD.

CenterPoint recommended modifying subsection (a)(4)(B) to clarify that the commission use estimated, rather than actual, transmission construction costs in its designation of CREZs.

Denton recommended that estimated hourly production and impact on ERCOT dispatch by renewable assets be considered in determining CREZs. LCRA recommended that it be specified that costs of transmission capacity "within and outside the CREZ" be considered.

The commission agrees with CenterPoint and LCRA and adds clarifying language throughout the rule, and moves this section to subsection (c), addressing the cost-benefit analysis of the transmission plan. The commission declines to add language requiring estimates of hourly production and dispatch effects, however. The need for such specificity in the study is left to ERCOT's professional judgment, recognizing that in the docket the commission may direct ERCOT to conduct an hourly analysis if needed.

The Wind Coalition recommended that the criteria by which CREZs will be selected be further clarified to specify the selection of cost effective sites, and that they should facilitate long-run and short-run growth of renewable resources, be statewide, and recognize the positive social benefits of non-renewable generation and system reliability that CREZ-driven transmission may bring. Similarly, AEP recommended that the most beneficial and cost-effective transmission capacity additions in each zone and from the aggregate of candidate zones should be considered by the commission in its evaluation. TIEC replied that the statute does not contemplate using "societal benefits" in analyzing potential CREZs, but rather seeks a cost-effective and efficient solution to renewable transmission needs and that existing programs already incorporate these societal benefits. TIEC explained that it seeks objective, rather than subjective, standards for the selection of CREZs. In its initial comments, TIEC advocated evaluating total transmission costs per MW of potential generation. On the other hand, King Ranch suggested adding other factors,

such as the effects of generation on environmentally sensitive areas, military readiness related to radar blockage by windmills, fuel diversity and availability, and overall ERCOT needs. State Representative David Swinford suggested including local support for and economic benefits of renewable development in criteria for selection, and to more directly address the 10,000 MW target that the Legislature also included in Senate Bill 20.

The commission agrees with AEP that PURA requires a specific cost-benefit analysis for the plan to construct transmission capacity necessary to deliver to electric customers the electric output from renewable energy technologies in a CREZ. The commission amends the rules throughout to reflect PURA and the factors that the commission may consider when making its cost-benefit analysis. Given the local impacts of wind power, members of the public will want an opportunity to comment on which zones are selected. The commission finds it reasonable to give appropriate weight to the information provided by ERCOT or by SPP, yet allow consideration of other factors (such as those mentioned by Representative Swinford and by King Ranch) that may be less quantifiable. The commission also concludes that the rule provides an avenue to meet the 10,000 MW target, without additional changes to the rule. Prices in the ERCOT market are highly correlated to the price of natural gas, there are many good wind resource areas in Texas, and this rule will provide greater certainty about the development of transmission facilities to permit renewable generation to deliver its energy to market. The commission believes that Texas is the most hospitable market in the country for wind development and that Senate Bill 20 and this rule will only make it more hospitable.

TXU Competitive recommended that 345 kV transmission upgrades be specified in CREZ orders. ERCOT opposed such a limitation on upgrades. Reliant and TIEC said voltage selection for upgrades is better handled in a contested case, rather than in the rule. ITC noted that multi-party discussions involving local stakeholders, and market participants may be needed to select locations, and so the ERCOT study should have more general, rather than specific, proposals regarding transmission needs.

Horizon recommended that the rule specify that locations for interconnection be placed near wind developments in a CREZ, to limit the need for additional easements to connect wind developments to distant hubs.

The commission agrees with ITC, TIEC and Reliant that specific voltage levels should be discussed in the CREZ docket. The commission declines to add Horizon's recommendation regarding the proximity of interconnection points to existing wind development; routing issues are more appropriately addressed in the CCN docket, not in the CREZ docket. In addition, the commission believes that it may be appropriate for wind developers to bear the cost of delivering power to specific locations that are determined to be the best locations for interconnection facilities or hubs that serve a CREZ.

FPL suggested accelerating the final order from the proposed six months after initiation of the case to five months, arguing that its proposals regarding notice and intervention allow a faster timeline.

Based on its experience in processing contested cases, the commission concludes that five months is not sufficient time and declines to reduce the schedule.

AEP recommended the consolidation of subsection (a)(5)(B) and (D) into a single provision, which would describe "any necessary transmission improvements in each CREZ, and from each CREZ or between aggregates of zones to address transmission constraints within the CREZ, from the CREZ, and between aggregate zones. ITC asked that the term "upgrades" be clarified.

ERCOT recommended miscellaneous language changes to subsection (a)(5) for clarification, and to combine subsections (a)(5)(B) and (a)(5)(D) because distinctions between improvements needed inside and outside the CREZ zone may be difficult to make.

The commission agrees with the clarifications proposed by ERCOT, AEP and ITC, and amends subsection (c) to reflect the analysis required by PURA.

ITC asked the commission to include transmission-only utilities among the types of utilities that could be designated to install CREZ improvements. The company said that the major advantages of transmission-only utilities are their specialization with transmission construction and operation, and their complete independence from other market participants. AEP recommended that current subsection (a)(5)(E) be modified to note that the entities responsible for improvements are, specifically, utilities.

The commission agrees with ITC and adds language to the rule allowing entities interested in constructing CREZ improvements to submit expressions of interest to the commission after a final CREZ order has been entered.

The Wind Coalition recommended adding a section allowing for expediting CREZ designation for regions with six million dollars of financial commitments, or IAs covering 50% of the proposed transmission capacity, or in cases where a specific CREZ is necessary to reach goals specified in PURA.

By clarifying its ability to sever potential CREZ determinations into separate dockets, the commission effectively allows for expedited treatment of zones where significant financial commitment has been provided. The commission declines, however, to incorporate specific thresholds in the rule, because the commission may still need to compare the financial commitments and costs and benefits of various proposed CREZs.

SPP recommended that subsection (a)(5) be applied specifically to ERCOT, and proposed a new subsection (a)(6) for CREZs that involve SPP, which is more consistent with SPP's OATT. SPP stated that it believes that its FERC-approved tariff contains requirements which may conflict with the current subsection (a)(5). AEP agreed that SPP specific concerns should be addressed and support this new section.

The commission agrees with SPP and AEP and clarifies subsection (a) consistent with SPP's comments.

§25.174(b)

SPP said that the indicators of financial commitment described in paragraphs (1) and (2) of the proposed subsection seemed broad enough to encompass commission consideration of the manner in which SPP verifies the commitment of the developer both to build and to interconnect the designated resource. Paragraph (3) would not be applicable to SPP, while paragraph (4) would require a tariff mechanism that SPP currently does not have. SPP recommended that, when considering generator financial commitment, the commission invite the recommendation of the independent transmission entity in which the CREZ would be located.

The Wind Coalition said that paragraph (1) of this subsection should elaborate on examples of financial commitments, and task the developer with substantiating them. The proposed rule provides that existing renewable energy resources, signed IAs, and executed lease agreements are indicators of financial commitment; the Wind Coalition recommended adding to this list funds paid for transmission studies, lease options, and other site agreements such as easements.

Horizon, on the other hand, recommended that signed IAs not be included as an indication of financial commitment. It also recommended adding a provision to ensure that a developer's efforts to coordinate with the TPWD to develop voluntary site guidelines would be taken into account.

FPL generally supported the mechanisms in the proposed rule for measuring generator financial commitment, saying the measures were appropriately technology-neutral, accommodated a

variety of business models, and established a level playing field between large and small developers. However, FPL said that if all the listed measures were equally valid, the priority dispatch provisions should not be limited to the progressive financial commitment mechanism described in paragraph (4). The company said the public policy arguments in favor of priority dispatch – displacing energy deployments from fossil-fuel generators and improving transmission planning – are equally valid for all methods described in this subsection.

The commission rejects Horizon's suggestion that IAs not be used as an indicator of financial commitment. The security requirement constitutes a ready measure that is already known to developers, and is accessible to small developers. The commission agrees with the Wind Coalition that transmission study fees and similar commitments should be taken into account as well. The commission recognizes that developers incur significant costs at various stages when planning a wind farm. These costs are tangible indicators of financial commitment, and the commission concludes that, like pending or signed IAs, they may be taken into account.

TIEC said that in general the proposed rule did not adequately address the financial commitment standard included in Senate Bill 20, because there was no articulation of how the varying financial commitments would be evaluated. TIEC emphasized that any financial contribution by generators should be used to lower the amount of money that customers have to pay for transmission. Instead of the mechanisms in subsections (b)(3) and (4), TIEC proposed an auction in which interested generation developers, including non-renewable generation developers, would offer cash deposits to reserve a certain amount of capacity on the expanded

transmission for the CREZ. Once the CREZ was chosen, the money contributed by developers would be used to offset the cost of the transmission facilities and serve to lower the burden on customers. In reply comments, Cities and King Ranch supported TIEC's proposal.

TXU Delivery and the Wind Coalition, however, raised concerns in their reply comments that the TIEC approach was essentially a requirement for participant funding of transmission. The Wind Coalition noted that Senate Bill 20 did not provide authority for the commission to require participant funding. It further disagreed that money deposited for the purpose of indicating financial commitment should be redistributed to utilities or their ratepayers. TXU Delivery did not explicitly oppose participant funding, but it did note that the issue has not been raised or vetted in sufficient detail to allow its incorporation into the rule as published. TXU Delivery suggested that if the commission were inclined to add a participant funding requirement, it should republish the rule.

LCRA proposed using flowgate rights for the CRR escrow mechanism in subsection (b)(3) rather than point-to-point rights, as doing so would be simpler. Flowgate rights would capture only the constraints coming out of the CREZ and would accurately reflect the direction of the constraint. If the rule were to use point-to-point CRRs, however, LCRA suggested using as the sink point the hub that was closest to the CREZ electrically. LCRA said all CRRs must operate within the boundaries established by the ERCOT protocols.

TXU Delivery said subsection (b)(3)(A) should include a requirement for a renewable energy developer to include a proposed schedule for development of a project. It also said the meaning

of "in proportion to the MW of commercial renewable resource to which they are assigned" in §25.174(b)(4) was unclear.

The commission declines to require a development schedule as recommended by TXU Delivery. However, it adds a provision that a developer's deposit may be forfeited if the project does not begin delivering energy within one year of being notified by the TSP that the transmission system can accommodate the developer's interconnection request, with the proviso that the commission can extend this deadline if circumstances warrant. The commission recognizes that many factors beyond the developer's control can delay completion of a project, or may require bringing a project on-line incrementally. A developer can demonstrate the existence of such circumstances once they occur, and at that time the commission will evaluate the need to grant more time.

§25.174(c)

The Wind Coalition said that the goal of Senate Bill 20 is not just to relieve existing transmission constraints to areas with existing wind generation, but to also provide new transmission infrastructure for the development of new wind generation capacity. Some of the new wind capacity may be incremental in existing wind farm areas, but much more of it will be in areas that currently do not have transmission infrastructure sufficient to support new wind development.

In addition, the Wind Coalition said that transmission planning work already performed by the electric grid operator due to existing transmission congestion may indicate that the existing

problems are being addressed and should not be part of the CREZ process. Specifically, ERCOT is already addressing known transmission constraints in Texas, and those efforts should proceed without being part of a CREZ proceeding.

Texas General Land Office recommended a strong, detailed plan from the commission including offshore wind.

The Legislature has directed the commission to ensure that transmission to serve a CREZ is planned and built in a manner that is most beneficial and cost-effective to the customers. Consequently, the commission cannot exclude a potential transmission improvement from the CREZ process simply because ERCOT is studying it as a solution to some other reliability problem. If one improvement can serve multiple purposes – one of which is to increase the amount of renewable energy delivered to customers – then that project has the potential to be more cost-effective. Being included in the CREZ order would cause the improvement to be placed in service sooner, and would assure the utility of cost recovery. The commission therefore declines to exclude from the CREZ process transmission improvements already under study for other purposes. Transmission alternatives that ERCOT has identified as likely to be needed for reliability purposes clearly may be relevant in assessing the costs and benefits of designating transmission for CREZs, and the commission may consider this issue in the CREZ docket.

The commission finds no barrier in the rule to consideration of off-shore wind power. An off-shore resource must connect to the grid on-shore at some point, and there is no

reliability difference between off-shore wind power connecting at that point, and on-shore wind power located at that point. The main differences are the cost of bringing the wind power to shore and whether this cost is borne by customers or by the developer. If the cost is borne by customers, then law requires that these costs be taken into account when evaluating the cost effectiveness of off-shore wind power relative to on-shore wind power. That is an issue to be addressed in the CREZ docket, not in this rulemaking.

CenterPoint urged the commission to include provisions in the rule that address recovery of the costs associated with preparing and submitting a CCN application identified to serve a CREZ. CenterPoint also recommended adding costs not recovered from renewable generators to be added to the TCOS, and that would address the "need and useful" standards for inclusion in capital projects. CenterPoint and LCRA said utilities should be entitled to recover all costs if the CCN is denied.

Cities disagreed with AEP and TXU Delivery regarding special ratemaking treatment for transmission investments during CREZ process. Cities said there is no basis for loosening or otherwise modifying existing regulatory review and recovery standards that apply to planning, investment and administrative costs that rise from the new CREZ process.

The commission agrees with CenterPoint and LCRA that the cost of preparing a CCN application, if ordered to do so by the commission, should be recoverable. Such costs should not be beyond review, however. Even if the purpose is acceptable, the commission should retain the ability to exclude wasteful or superfluous expenditures toward that

purpose. Such a review currently would take place in the utility's next rate case, and the commission finds no need to do otherwise with respect to CREZ-related CCN costs.

ERCOT said §25.174(c)(3) could limit the ability of non-CREZ generation to make use of transmission related to CREZ development, even when that transmission includes lines that are remote from the CREZ. ERCOT suggested that the commission consider whether additional parameters on the restriction of connecting to all new CREZ-related transmission facilities are warranted. ERCOT noted that the proposed rule currently does not contain a mechanism or criteria to release a CREZ-related hold on the use of transmission facilities that are not, in fact, utilized.

Similarly, TXU Delivery recommended modifying §25.174(c)(3) to provide for better network utilization of the CREZ transmission facilities. The present wording appears to needlessly prohibit the use of the designated CREZ facilities by any non-renewable generation, when the intent should be to preserve the capacity in the area network for the designated CREZ capacity. Accordingly, TXU Delivery proposed modification of the proposed rule to permit the CREZ transmission facilities to be incorporated into the network, to ensure that the intended capacity is reserved for the renewable generation, and to allow for efficient use of all facilities in the region.

LCRA proposed changing §25.174(c)(3) to clarify that transmission for the designated CREZ size may be considered fully utilized, but if a transmission line has additional capacity, that capacity can be considered for other interconnection. ITC agreed, saying that integrating non-

wind generation with wind generation would provide better network utilization of the CREZ transmission facilities.

Reliant said §25.174(c)(3) would be problematic if interpreted to mean that for renewable generation facilities, the open-access transmission rules do not apply. Reliant says that PURA §39.904(i) requires that transmission to CREZ must be in accordance with the principle of open transmission access.

The commission agrees that full utilization of the transmission system is desirable. The main issue with respect to this rulemaking is the potential for excessive curtailment of renewable resources. As discussed elsewhere in this order, the commission finds that if full utilization were to result in curtailment, the problem should be addressed in a separate docketed proceeding rather than this rulemaking.

§25.174(d)

TXU Delivery said the meaning of the phrase "request interconnection agreements" in §25.174(d)(4) was unclear. It noted that proposed §25.174(d)(1) addresses a request for interconnection pursuant to the provisions of §25.198(c) of this title (relating to Initiating Transmission Service), but that there is no market process for "requesting" an interconnection agreement. Following completion of the necessary interconnection studies, transmission utilities and generators can prepare and sign an interconnection agreement when the parties are ready to proceed. Through the use of the IA, the process for developing and executing an interconnection agreement is often short and routine. To the extent it is the commission's intent that "request

interconnection agreements" means to execute an agreement, TXU Delivery noted that it is certainly possible that the necessary studies may not be completed in time to allow for execution of an interconnection agreement during the open season set forth in the proposed rule.

The commission acknowledges the points made by TXU Delivery and amends the rule accordingly.

The Wind Coalition, FPL and Shell said §25.174(d)(3) should require transmission providers to accommodate all development interest by expanding the transmission plan. Otherwise, it said, the commission should allocate available transmission on a pro-rata basis and restrict further interconnection of renewable resources. The Wind Coalition said it would be appropriate to allocate available capacity to projects that have participated in the open season and demonstrated financial commitment as described in proposed subsection (b). It said interconnection preferences should be tradable to other entities. Shell recommended a blind bid process in the event there are more entities with financial commitment in the CREZ.

Horizon proposed that if there are more entities demonstrating financial commitment for a CREZ than the CREZ transmission facilities will allow, the commission should use a blind bid process to determine the successful wind developments. In the event that transmission improvements are feasible, the commission may also require the expansion of transmission facilities to the CREZ to accommodate the additional financial commitment to the zone.

The commission notes that it has the authority to increase the planned capacity of a CREZ as suggested by the Wind Coalition, FPL and Shell, in the event that the degree of expressed interest exceeds the planned maximum amount. Whether such a determination would be appropriate and cost-effective would depend on the facts particular to the case. Therefore, it would be inappropriate for this rule to require an automatic increase in the planning capacity for any CREZ capacity simply because the CREZ was oversubscribed early. The blind bid process proposed by Horizon is unlikely to be necessary given the priority provisions incorporated into the rule. If facts in the CREZ docket reveal unusual circumstances that require additional measures, however, the commission may consider in the docket blind bids or other options that the commission deems suitable to the circumstances.

All comments, including any not specifically discussed herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

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

customer is entitled to have access to providers of energy generated by renewable energy resources; and §39.904, provides the commission the power to adopt rules necessary to administer and enforce the programs to promote the development of renewable energy technologies.

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

§25.174. Competitive Renewable Energy Zones.

(a) **Designation of competitive renewable energy zones**. The designation of Competitive Renewable Energy Zones (CREZs) pursuant to Public Utility Regulatory Act (PURA) §39.904(g) shall be made through one or more contested-case proceedings initiated by commission staff, for which the commission shall establish a procedural schedule. The commission shall consider the need for proceedings to determine CREZs in 2007 and in subsequent years as deemed necessary by the commission.

(1) Commission staff shall initiate a contested case proceeding upon receiving the information required by paragraph (2) of this subsection. Any interested entity that participates in the contested case may nominate a region for CREZ designation. An entity may submit any evidence it deems appropriate in support of its nomination, but it shall include information prescribed in paragraph (2)(A) - (C) of this subsection.

(2) By December 1, 2006, the Electric Reliability Council of Texas (ERCOT) shall provide to the commission a study of the wind energy production potential statewide, and of the transmission constraints that are most likely to limit the deliverability of electricity from wind energy resources. ERCOT shall consult with other regional transmission organizations, independent organizations, independent system operators, or utilities in its analysis of regions of Texas outside the ERCOT power region. At a minimum, the study submitted by ERCOT shall include:

(A) a map and geographic descriptions of regions that can reasonably accommodate at least 1,000 megawatts (MW) of new wind-powered generation resources;

(B) an estimate of the maximum generating capacity in MW that each zone can reasonably accommodate and an estimate of the zone's annual production potential;

(C) a description of the improvements necessary to provide transmission service to the region, a preliminary estimate of the cost, and identification of the transmission service provider (TSP) or TSPs whose existing transmission facilities would be directly affected;

(D) an analysis of any potential combinations of zones that, in ERCOT's estimation, would result in significantly greater efficiency if developed together; and

(E) the amount of generating capacity already in service in the zone, the amount not in service but for which interconnection agreements (IAs) have been executed, and the amount under study for.

(3) The Texas Department of Parks and Wildlife may provide an analysis of wildlife habitat that may be affected by renewable energy development in any candidate zone, and may submit recommendations for mitigating harmful impacts on wildlife and habitat.

(4) In determining whether to designate an area as a CREZ and the number of CREZs to designate, the commission shall consider:

(A) whether renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(B) the level of financial commitment by generators; and

(C) any other factors considered appropriate by the commission as provided by PURA, including, but not limited to, the estimated cost of constructing transmission capacity necessary to deliver to electric customers the electric output from renewable energy resources in the candidate zone, and the estimated benefits of renewable energy produced in the candidate zone.

(5) The commission shall issue a final order within six months of the initiation by commission staff of a CREZ proceeding, unless it finds good cause to extend the deadline. For each new CREZ it orders, the commission shall specify:

(A) the geographic extent of the CREZ;

(B) major transmission improvements necessary to deliver to customers the energy generated by renewable resources in the CREZ, in a manner that is most beneficial and cost-effective to the customers, including new and upgraded lines identified by voltage level and a general description of where any new lines will interconnect to the existing grid;

(C) an estimate of the maximum generating capacity that the commission expects the transmission ordered for the CREZ to accommodate; and

(D) any other requirement considered appropriate by the commission as provided by PURA.

(6) The commission may direct a utility outside of ERCOT to file a plan for the development of a CREZ in or adjacent to its service area. The plan shall include the maximum generating capacity that each potential CREZ can reasonably accommodate; identify the transmission improvements needed to provide service to each CREZ; and include the cost of the improvements and a timetable for complying with all applicable federal transmission tariff requirements.

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

(1) A renewable energy developer's existing renewable energy resources, and pending or signed IAs for planned renewable energy resources, leasing agreements with landowners in a proposed CREZ, and letters of credit representing dollars per MW of proposed renewable generation resources, posted with ERCOT, that the developer intends to install and the area of interest are examples of financial commitment by developers to a CREZ. The commission may also consider projects for which a TSP, ERCOT, or another independent system operator is conducting an interconnection study; and any other factors for which parties have provided evidence as indications of financial commitment.

(2) A non-utility entity's commitment to build and own transmission facilities dedicated to delivering the output of renewable energy resources in a proposed CREZ to the transmission system of a TSP in Texas or a deposit or payment to secure or fund the construction of such transmission facilities by an electric utility or a transmission utility to deliver the output of a renewable generation project in Texas is an indication of the entity's financial commitment to a CREZ.

(c) **Plan to develop transmission capacity.**

(1) After the issuance of a final order in accordance with subsection (a)(5) of this section, entities interested in constructing the transmission improvements shall submit expressions of interest to the commission. The commission shall select the entity or entities responsible for constructing the transmission improvements, establish a schedule by which the improvements shall be completed, and specify any additional reporting requirements or other measures deemed appropriate by the commission to ensure that entities complete the ordered improvements in a timely manner.

(2) The commission shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the CREZ.

(3) In developing the transmission capacity plan, the commission may consider:

(A) the estimated cost of constructing transmission capacity necessary to deliver to electric customers the electric output from renewable energy resources in the candidate zone;

(B) the estimated cost of additional ancillary services; and

(C) any other factors considered appropriate by the commission as provided by PURA.

(4) No later than one year after an order by the commission designating a CREZ, the TSP or TSPs selected to provide transmission service in or to a CREZ shall file applications for all required certificates of convenience and necessity (CCNs) for transmission facilities identified by the commission in the CREZ order as most

beneficial and cost-effective to the customers. The commission may allow additional time for a TSP to file an application upon a showing of good cause by the TSP. The commission may establish a filing schedule if a CREZ order requires numerous CCN applications.

(5) A CCN application for a transmission project intended to serve a CREZ need not address the criteria in PURA §37.056(c)(1) and (2).

(6) Within 45 days of an application for a CCN for transmission improvements filed pursuant to the order designating the zone a CREZ, each developer for that CREZ shall post a letter of credit or other collateral to an amount equal to 10% of the developer's pro rata share of the estimated capital cost of the transmission improvements covered by the CREZ order, including the TSP's cost of preparing its CCN application. If any developer fails to deposit the required funds, the commission may take appropriate action, including, but not limited to, the following: reconsideration of its CREZ designation; dismissal of the TSP's CCN application; seeking another developer to step into the shoes of a defaulting developer; ordering the return of all deposits to developers who made adequate deposits; ordering the application of the defaulting developer's deposits toward the costs incurred by TSPs pertaining to planning and CCN proceedings for the transmission facilities covered by the order designating the zone a CREZ; and ordering the return of any remaining balance to the defaulting developer.

(7) In evaluating the CCN applications, the commission shall consider the level of financial commitment by generators. The TSP may propose modifications to the transmission improvements described in the CREZ order if such improvements

would reduce the cost of transmission or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate. The commission may direct ERCOT to review modifications proposed by the TSP.

(d) **Obligation to take transmission service in a CREZ.**

(1) A developer that deposited funds in accordance with subsection (b)(1) or (c)(6) of this section shall take transmission service in the CREZ no later than one year after the TSP notifies it that the transmission system is capable of accommodating the developer's renewable energy facility, unless the commission approves an extension of time. If the developer does not take transmission service as required, the developer shall be considered to have forfeited, for the benefit of the TSP, all collateral, letters of credit or funds it has deposited.

(2) If the developer completes the generation facilities and begins delivering energy from the CREZ within one year of the completion of the transmission improvements, the TSP and ERCOT shall refund to the developer all collateral, letters of credit or funds it has deposited.

(e) **Disincentives for excess development in a CREZ.** If the aggregate level of renewable energy capacity for which transmission service is requested for a CREZ exceeds the maximum level of renewable capacity specified in the CREZ order, the commission may initiate a proceeding and limit interconnection to and/or establish dispatch priorities regarding the transmission system in the CREZ, and identify the developers whose projects may interconnect to the transmission system in the CREZ under special protection schemes. Priority in interconnecting to the transmission system may be based on a number of factors, including financial commitments of the developers in accordance

with subsections (b) and (c) of this section. In determining such priority, the commission may also consider the progress that a developer has made in obtaining the transmission studies required for a new generator interconnection as indications of financial commitment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that new §25.174, relating to Competitive Renewable Energy Zones, is hereby adopted with changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS the _____ day of DECEMBER 2006.

PUBLIC UTILITY COMMISSION OF TEXAS

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PAUL HUDSON, CHAIRMAN

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JULIE PARSLEY, COMMISSIONER

See separately filed dissent:

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BARRY T. SMITHERMAN, COMMISSIONER

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