PROJECT NO. 34577

PROCEEDING TO ESTABLISH POLICY RELATING TO EXCESS DEVELOPMENT IN COMPETITIVE RENEWABLE ENERGY ZONES	**§ § § §**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER ADOPTING AMENDMENTS TO §25.174
AS APPROVED AT THE OCTOBER 8, 2009 OPEN MEETING

The Public Utility Commission of Texas (commission) adopts amendments to §25.174, relating to Competitive Renewable Energy Zones, with changes to the proposed text as published in the July 17, 2009 issue of the *Texas Register* (34 TexReg 4712). The amendments implement Public Utility Regulatory Act (PURA) §39.904(g), which directs the commission to consider the level of financial commitment by renewable generators for each Competitive Renewable Energy Zone (CREZ) in determining whether to grant a certificate of convenience and necessity (CCN). The amendments address the level of financial commitment that renewable generators must satisfy before the commission will process the CCN applications for transmission facilities to serve certain CREZs previously designated by the commission, and delete language that would be inconsistent with the changes resulting from the amendment.

The commission finds that installed generating capacity, continuing construction of new generation, and signed interconnection agreements are the best measures of wind-generator financial commitment. The commission adopts a test that includes these standards to evaluate whether renewable generators have demonstrated sufficient financial commitment to warrant the approval of CCNs for the CREZ transmission facilities identified in Docket Number 33672. For the three southern CREZs, McCamey, Central, and Central West, the amount of renewable

generation already developed in those CREZs, the amount of additional renewable generation currently under development, and the renewable capacity represented by signed interconnection agreements demonstrate that sufficient financial commitments have been made for those zones. The commission concludes that renewable generators have provided sufficient information in this proceeding that new generation development has or will occur to use the new transmission lines built to these CREZs. In reaching this conclusion, the commission has relied on data available from the Electric Reliability Council of Texas (ERCOT) about installed renewable generation and signed interconnection agreements. In Docket Number 33672, the commission designated the McCamey, Central, and West Central zones as CREZs with generation capacities of 1859, 3047, and 1063 megawatts (MWs), respectively, along with new transmission facilities necessary to transport the output of the designated generation. As of June 1, 2009, capacity represented by installed renewable generation and interconnection agreements in those three CREZs already totaled 1206, 6208, and 1728 MWs respectively.

For the CREZs for which sufficient information concerning financial commitments has not yet been provided, wind generators have the opportunity, in a proceeding that takes place after the adoption of the amendment, to either provide evidence that they meet the test described above or to demonstrate financial commitment by posting collateral. There is evidence that, without collateral postings, the test described above cannot be met with respect to the two CREZs in the Texas Panhandle, Panhandle A and Panhandle B. Unless additional commitments are made for these CREZs, collateral will have to be posted before the commission can determine that the CCNs filings should proceed. Under the amended rule, renewable generators interested in building renewable projects in those two zones will have to post security deposits or other

collateral of $15,350 per MW of capacity corresponding to their planned projects, or $10,000 per MW if the capacity is supported by appropriate leasing agreements. If the sum of the capacity represented by completed projects, projects under construction, signed interconnection agreements and collateral is at least 50% of the designated capacity for a CREZ, the financial commitment requirement will be deemed to be met for that CREZ. The security deposits are refundable when a renewable generator signs an interconnection agreement with a Transmission Service Provider (TSP) designated to build transmission facilities in the relevant CREZ but would be forfeited to the TSP if the generator does not sign an interconnection agreement. An interconnection agreement with a TSP is a major milestone in the development of a generation project.

This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). The amendments to §25.174 are adopted under Project Number 34577.

The commission received numerous comments and reply comments on the proposed amendments to §25.174. Initial comments were submitted by: CPV Renewable Energy Company, LLC, CPV Rattlesnake Den Renewable Energy Company, LLC, and CPV Steele Hill Renewable Energy Company, LLC (collectively CPV), Lone Star Transmission, LLC (Lone Star), Steering Committee of Cities Served by Oncor (Oncor Cities), NRG Texas (NRG), City of Austin d/b/a/ Austin Energy (Austin Energy), Texas Industrial Energy Consumers (TIEC), E.ON Climate & Renewables North America, Inc. (E.ON), Horizon Wind Energy LLC (Horizon), Penn Real Estate Group, Ltd. (Penn), Oncor Electric Delivery Company, LLC (Oncor), Shell WindEnergy, Inc. (Shell), Iberdrola Renewables, Inc. (Iberdrola), Electric Transmission Texas,

LLC (ETT), Eurus Energy America Corporation (Eurus), Sharyland Utilities, LP (Sharyland), Cross Texas Transmission, LLC (Cross Texas), Reliant Energy Retail Services, LLC, and Reliant Energy Texas Retail, LLC (collectively Reliant), Invenergy Wind North America, LLC (Invenergy), Luminant Energy Company, LLC and Luminant Generation Company, LLC (collectively Luminant), CPS Energy (CPS), the Electric Reliability Council of Texas, Inc. (ERCOT), Third Planet Windpower, LLC (TPW), Higher Power Energy (HPE), NextEra Energy Resources, LLC (NextEra), Cielo Wind Services, Inc. (Cielo), RES America Developments, Inc. (RES America), AES Wind Generation, Inc. (AES), B.N.B. Renewable Energy, LLC (BNB), and Longfellow Ranch Partners, LP (Longfellow Ranch).

Reply comments were filed by Worldwide Energy, Inc. (Worldwide Energy), Longfellow Ranch, Austin Energy, Denton Municipal Electric (DME), Oncor Cities, Lone Star, Eurus, Pattern Renewables, LP (Pattern Renewables), Horizon, John Deere Wind Energy (Deere), Oncor, E.ON, TIEC, ETT, Sharyland, the Lower Colorado River Authority (LCRA), Cross Texas, RES America, ERCOT, PSEG Texas, LP (PSEG Texas), NextEra, Invenergy, Iberdrola, AES, Shell, Duke Energy Corporation (Duke Energy), and CPS.

A public hearing was held on August 11, 2009. No parties offered comments on the rule directly. However, several parties responded to clarifying questions by the commission staff. Sharyland inquired whether the language in proposed subsection (d)(5) regarding the purchase of surface rights included leases and other site control instruments and suggested it be clarified. Iberdrola also commented on the site control language and favored language proposed by E.ON. TIEC commented that limitations should be placed on the CCNs issued for CREZ transmission

lines so that if a transmission utility proposes to modify the line and its transfer capacity the financial commitment requirement should be harmonized with the changed transfer capability. Horizon commented on the forms of collateral, suggesting that the use of a parental guarantee be permitted. ERCOT requested that, in the event the commission decides that collateral should be posted with ERCOT, such collateral be posted in a form that would allow its existing processes to be used, with no fiduciary responsibility for ERCOT.

Preamble Question on Collateral

In the preamble of the proposal for publication, the commission posed a series of interrelated questions regarding the potential value and importance of requiring wind generators to post collateral as a means of ensuring wind energy development sufficient to use the transmission lines built to the CREZs. The commission asked the following questions:

Should a requirement that renewable energy developers post a security deposit be added to any tier of the proposed three-tier test to establish financial commitment in the Panhandle CREZs? If so, how should the amount be determined? What procedure should govern the posting of the deposit? Should the deposit be posted with ERCOT or with a TSP designated to build transmission facilities in or to the Panhandle CREZs? What event should trigger a return of the deposit?

On September 24, 2009, the commission invited additional comments on the appropriate amount of security deposit to be posted as collateral and the methodology used to support the proposed

amount. The notice indicated that interested persons could file comments within four calendar days, or by September 28, 2009. In response to that notice, additional comments were received from E.ON, Invenergy, Horizon, Eurus, Third Planet, Higher Power, Shell, Horizon, Fremantle Energy, Luminant, TIEC, Oncor Cities, RES America, Cielo, Iberdrola, and Cross Texas. A summary of these comments is included within the discussion of initial and reply comments below. The commission response also responds to the supplemental comments.

Summary of Comments and Commission Responses

TSP Proposal for Modifications to the Transmission Improvements in CREZ Order

CPS suggested requiring that a TSP that proposes a modification to the transmission improvements described in the CREZ Order file an application with the commission. The application should be reviewed by ERCOT to determine whether the proposed modifications would reduce the cost of transmission or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate. In reply comments, NextEra disagreed, stating that, in addition to imperiling the CREZ transmission certification schedule already approved by the commission, CPS's proposal is contrary to PURA §39.151(d), which requires that ERCOT actions be subject to review and oversight of the commission. TIEC commented that it is essential for transmission providers to be reasonably restricted as to the project costs and scope and proposed that the rule include a provision that a cost cap be established in each CCN proceeding and CREZ providers be held within a reasonable cost range of the level contemplated in Docket Number 35665. In reply comments, Oncor, Lone Star and NextEra responded that TIEC's and CPS's proposed changes are beyond the scope of the rule

amendments the commission is considering. In reply comments, E.ON emphasized that the commission should limit the scope of the proceeding to the financial commitment necessary for approval of CREZ CCNs. In reply comments, NextEra argued that it is appropriate that the commission, in a CCN case, review any proposed change by a TSP that may reduce transmission costs or increase the amount of generating capacity that CREZ transmission can accommodate because the commission addressed transmission facilities and plans in general terms in Docket Number 33672 with the goal of addressing and reviewing the details of the transmission plans in a subsequent CCN proceeding.

TIEC also noted that if a TSP is allowed to modify or expand the scope of a project, the commission will have to take steps to ensure that additional generating capacity will materialize in the CREZ to justify the increased scope of the transmission project. In its reply comments, TIEC further clarified its initial comments regarding limitation on transmission project expansions, stating that the rule should contain standards to limit capacity expansions to only those that do not increase costs. TIEC also recommended that the commission not approve an expanded scope unless it will be justified by additional generation beyond that already contemplated and approved by the commission.

In reply comments, Deere Wind disagreed with any suggestions to limit the scope, arguing that allowing the transmission capacity to be increased in the CCN proceedings is the best tool to avoid excess CREZ development.

In reply comments, Lone Star disagreed with TIEC's proposal to cap the cost of transmission lines, adding that the commission need not cap costs through this rule because it has many tools available to help it manage CREZ costs, and no additional mechanism is required. Lone Star noted that actual transmission costs may in fact deviate from the cost estimates in the CREZ Transmission Optimization Study (CTO study) as the study is now two-years old and was based on simplifications regarding routing constraints that could underestimate line lengths. In addition, changing technology, inflation, weather, and vendor costs could all affect costs. In reply comments, Sharyland and Cross Texas had similar comments, adding that a TSP will be required to show that its costs were prudently incurred when it seeks to recover its costs on a particular project in a rate case. In reply comments, ETT added that expecting precise engineering estimates even before the final route is selected is unreasonable.

Commission Response

The commission agrees with TIEC and CPS that cost containment is very important. However, the commission also agrees with Oncor, Lone Star and NextEra that TIEC's and CPS's proposed changes are beyond the scope of this rule. The commission also agrees with NextEra that it is more appropriate for the commission to address issues related to changes that may reduce transmission costs or increase the amount of generating capacity proposed by a TSP in a CCN case.

Financial Commitment Requirement for Granting CREZ CCNs

Luminant, citing PURA §39.904(g)(3), and E.ON, took the position that the commission must consider the level of financial commitment by renewable generators in evaluating whether to process the CCN applications. TIEC also thought that additional evidence of financial

commitment was appropriate before the CCNs for the Panhandle CREZ transmission lines are approved. Horizon had a different interpretation of the statute, contending that because the commission has already determined that there was sufficient financial commitment for CREZ designation, there is no need for a separate methodology to grant the CCNs. Horizon concluded that the previously established level of financial commitment, if reaffirmed in affidavits by the CREZ developers at the time the CCNs are filed, should be sufficient to support the granting of the CCNs. In reply comments, Oncor Cities disagreed, stating that such affidavits may indicate good intentions on the part of the developers, but are not sufficient to secure the expenditures of billions of dollars by ratepayers.

Commission Response

The commission disagrees with Horizon and agrees with Luminant, E.ON, and Oncor Cities that the financial commitments deemed sufficient for CREZ designation are insufficient and additional evidence of financial commitment is necessary before the CREZ CCNs can be approved.

Financial Commitment Requirement in the McCamey, Central and Central West CREZs

CPS, Invenergy, AES, Luminant, E.ON, and Cielo agreed that investment already made in the McCamey, Central and Central West CREZs in the form of existing generation or generation under construction is sufficient evidence of financial commitment for these CREZs. Shell and Horizon did not oppose this determination. Lone Star agreed but limited its comments to the Central CREZ, stating that no additional financial commitment is needed in the Central CREZ. In reply comments, Invenergy supported E.ON and RES America's suggestion that signed

interconnection agreements be considered along with existing generation and proposed generation for the southern CREZs as a strong indication of financial commitment. In reply comments, E.ON advocated the application of the tier framework to all CREZs, including the southern CREZs, to provide a forum to confirm that those CREZs meet Tier 1.

Oncor Cities contended that the commission has not provided sufficient factual analysis to support the decision that existing generation and generation under construction provide adequate financial commitment in the McCamey, Central and Central West CREZs to grant CCN applications. Oncor Cities would not completely exempt those projects from the 10% collateral requirement, especially because it is refundable under the current rule, although they would agree to reduce it. Oncor Cities perceived risks that could result in CREZ lines being under-utilized in the three zones. They included in those risks the possibility that some capacity could be diverted to other regions, for example the Southwest Power Pool (SPP) or the Western Electricity Coordinating Council (WECC), while the CREZ buildout proceeds; and the possibility that the wind developers might build their own private transmission facilities to connect to the ERCOT system. They also mentioned the possibility that wind projects might not be economic once the production tax credit is terminated, which will happen soon for some of the older projects. Based on these considerations, Oncor Cities urged the commission to maintain a collateral requirement in the three southern CREZs. In its reply comments, AES disagreed and contended that the financial commitment in the southern CREZs is a settled issue. AES stated that, as demonstrated in Horizon's initial comments, there is currently an excess supply of wind generation in the southern CREZs, and that installed generation and generation currently under construction in the three southern CREZs provide sufficient financial

commitment for the approval of CCNs related to these CREZs. AES refuted Oncor Cities' claims regarding the risks to ratepayers in the absence of a collateral requirement for the southern CREZs, pointing out that ratepayers are currently harmed by congestion that the CREZ transmission facilities, especially the priority projects, were intended to relieve. In its reply comments, NextEra also disagreed with Oncor Cities and opined that, given the high levels of operational wind generation in the southern CREZs, additional collateral is unnecessary and should not be required. However, if the commission were to approve a meaningful dispatch priority mechanism for which only projects supported by collateral are eligible, NextEra would want its projects to be eligible to provide collateral and to qualify for such dispatch priority mechanism. In reply comments, Horizon pointed out that the planned transmission facilities in the southern CREZs will be oversubscribed by 50% when completed, which demonstrates that there will be sufficient wind generation to support the planned transmission facilities, therefore additional financial commitment requirements would needlessly constrain financial resources that would be better utilized for project development.

Commission Response

The commission believes that there is already sufficient evidence of financial commitment in the southern CREZs as demonstrated by existing construction, projects under construction, and signed interconnection agreements, to approve the CCNs for those CREZs. The commission agrees with Horizon and other commenters that, if all planned projects in the southern CREZs are completed, the southern CREZs will be oversubscribed, and that the CREZ lines and priority lines are needed to relieve congestion that already exists in those zones. The commission disagrees with Oncor Cities that a

substantial risk exists that the CREZ lines in those three zones will be under-utilized. The possibility that some capacity could be diverted to other regions, as stated by Oncor Cities, appears extremely unlikely at this time given the absence of transmission lines or planned transmission projects that would be required to transport the wind energy from the southern CREZs to those regions. Similarly, the possibility that the wind developers might build their own private transmission facilities to connect to the ERCOT system and transport their wind - generated energy outside the congested West zone, as NextEra has done, appears unlikely. In both cases, building transmission facilities over such extended distances represents an extraordinary investment that would only be justified if a generator expected congestion in the West zone to cause a significant price difference between the West zone and the other regions or zones. But such expectations could only be fulfilled if the CREZ transmission lines were oversubscribed causing frequent congestion, in which case there would not be any stranded investment costs to ratepayers. The commission notes that Oncor Cities have not provided any tangible information or data that would support either scenario.

Methodology for Evaluating Financial Commitment

Horizon rejected the proposed three-tiered approach to determine the financial commitment of Panhandle wind developers. Horizon disapproved of the proposed Tier 1 because, it contended, the Legislature intended that some measure less than actual construction would suffice as financial commitment from wind generators. Horizon disagreed with the proposed Tier 2's reliance on signed interconnection agreements as evidence of financial commitment, contending that two of the TSPs that would be called upon to sign these agreements were still in the start-up

phase and would not have sufficient resources in place to negotiate and sign such agreements. However, Horizon agreed that the application for interconnection agreements with a TSP in Tier 3 could be considered as evidence of financial commitment.

In reply comments, Horizon commented that because the transmission plan selected by the commission is an integrated plan that has been optimized for the locations and projected levels of generation specified in Docket Number 33672, consideration of the financial commitment for CCNs to implement the plan should also be determined on an integrated basis. According to Horizon, when viewed in this manner, financial commitment for all of the CCNs, including those for the Panhandle CREZs, has already been established.

Commission Response

The commission disagrees with Horizon. To the extent that Horizon's view of the legislative intent is correct, the commission is adopting a standard that is consistent with that intent because the proposed test can be satisfied without a demonstration of need for 100% of the CREZ transmission facilities for which a CNN is sought. The commission also disagrees that an application for interconnection agreement is firm enough to be considered evidence of financial commitment in lieu of a completed interconnection agreement for the purpose of the CREZ CCNs. An application for interconnection may be made without the generator having a clear indication of the challenges associated with interconnecting a project at the site it has identified. A signed interconnection agreement indicates that the generator has committed more resources to funding and participating in the required transmission studies and has a clear idea of what it will take to interconnect

the project. The commission believes that this higher level of resource commitment is appropriate before a CCN may be issued. Finally, the commission disagrees with Horizon's contention that the financial commitment has already been established for approval of the CCNs for the Panhandle CREZs. The commission believes that the evidence provided by wind developers in Docket Number 33672 regarding their intention to build wind generation projects was adequate for CREZ geographic designation, but insufficient to justify the approval of CREZ line CCNs. The commission concludes that it is important to have an additional level of protection for customers at the CCN stage beyond the financial commitments that were considered in designating the CREZs.

Invenergy, RES America, Eurus, Sharyland, ETT, Iberdrola, E.ON, Cielo, Higher Power, Third Planet, and ETT supported the tiered methodology and agreed that it is an objective way for the commission to evaluate and recognize the strength of existing financial commitments.

Oncor Cities contended that the tiered methodology failed to protect ratepayers. They argued that the standards in Tier 1 had the same shortcomings as they noted for the southern CREZs. The standards proposed in Tiers 2 and 3 were deemed by Oncor Cities to be even less reliable as indicators of financial commitment, whether they rely on contracts or lease agreements. In Tier 3, Oncor Cities contended that the interconnection agreement application standard demonstrated no commitment at all. In conclusion, Oncor Cities urged the commission to maintain the collateral requirement before approving the construction of lines for CREZ wind development. In reply comments, TIEC shared the concerns expressed by Oncor Cities about the tiered

methodology and repeated its recommendation to replace Tiers 2 and 3 with a security deposit requirement to offset some of the risks identified by Oncor Cities.

Luminant proposed that the commission retain Tier 1 with a few clarifications, as existing or nearly completed development is the best demonstration of financial commitment, but eliminate proposed Tiers 2 and 3 as drafted and replace them with a new Tier 2 requirement for developers in a CREZ that does not satisfy Tier 1 to post collateral. Luminant opined that taken as a whole, the Tier 2 and 3 standards are subjective and imprecise and do not provide reliable or easily measurable evidence of financial commitment, adding that attempted showings under these standards could be subject to challenge. In reply comments, TIEC agreed with Luminant that the Tier 2 and 3 criteria should be replaced with a simple collateral deposit requirement.

Commission Response

The commission disagrees with Invenergy, RES America, Eurus, Sharyland, ETT, Iberdrola, E.ON, Cielo, Higher Power, Third Planet, and ETT and agrees with Oncor Cities, Luminant, and TIEC that Tiers 2 and 3 in the proposed rule should be eliminated as options in the financial commitment test because the standards they include either cannot be met in the Panhandle CREZs or do not provide the assurance the commission is seeking. The commission is retaining the two standards proposed in Tier 1 with the addition of signed interconnection agreements as a third standard to be considered in the financial commitment test, and with the addition of a fourth standard giving wind developers the option to post collateral if they cannot meet any of the first three standards of the financial commitment test, as recommended by Luminant and TIEC. If the sum of the renewable

generating capacity represented by completed renewable generation projects, projects under construction, projects for which an interconnection agreement has been signed, and collateral deposits is at least 50% of the designated generating capacity for a CREZ, the financial commitment requirement will be deemed satisfied for that CREZ. The commission modifies subsection (d) accordingly.

Luminant would modify subsection (d)(5)(ii) relating to generating projects under construction to specify that the project would have to be operational within six months from the date of the first CCN filing for the CREZ, and to add examples of specific non-qualitative evidence that the developers must present to establish that their projects will actually be operational within that six-month period. For example, Luminant recommended that the commission require evidence that the wind turbines needed for the project will be delivered within 30 days of the filing of the CCN application; that they subsequently are delivered; that a construction contractor has been hired; that preliminary site work has begun; and that the project financing has closed.

NextEra recommended a change to the "generation under construction" standard in Tier 1. NextEra would replace the requirement that such project be operational within six months with a requirement that the project have an interconnection agreement and be operational within 12 months of completion of the transmission facility within the relevant CREZ. NextEra believed this change to be necessary because a Panhandle project will not be able to connect to the ERCOT grid until after the transmission lines of the Panhandle CREZ become operational, and it would be unreasonable to require that the project be completed and sit idle until the transmission

lines are built. In reply comments, Invenergy supported NextEra's recommendation to change the Tier 1 six-month project completion requirement to 12 months.

Commission Response

The commission partially agrees with Luminant regarding the generation projects under construction standard. The commission decides that such projects should be counted toward the determination of financial commitment if the project is on schedule to be completed within six months of the final order in the financial commitment proceeding. The commission modifies the rule to accept, as evidence of project under construction, documentation showing that the preliminary site work has begun, a construction contractor has been hired, the project financing has closed, or similar evidence of progress in the completion of the project.

The commission rejects the recommendation presented by NextEra and supported by Invenergy to accept as proof of financial commitment a planned project with operational date as late as 12 months after completion of the transmission facility within the relevant CREZ. Such a standard would fail to provide any assurance that the project will be built at the time when the commission is considering whether the financial commitment is sufficient to approve the CCN application.

E.ON recommended signed interconnection agreements as an additional standard firm enough to be considered in Tier 1. In reply comments, Invenergy supported this proposal, stating that

evidence filed by ERCOT in Docket Number 33672 shows projects with signed interconnections are likely to be placed in service.

Commission Response

The commission agrees with E.ON and Invenergy that a signed interconnection agreement is evidence of firm commitment to build and should be included in the financial commitment test. The commission modifies the financial commitment test by adding signed interconnection agreements as a standard to be considered along with completed projects and planned projects under construction to provide evidence of financial commitment in a CREZ. The commission modifies subsection (d) accordingly.

NextEra recommended replacing the "application for interconnection agreement" standard in Tier 3 with a "request for full interconnection study", or similar language, as the former is not defined, but the latter is a defined step in the Generation Interconnection Process of the ERCOT Regional Planning Group Charter and Procedures. E.ON supported NextEra's recommendation in its reply comments.

Commission Response

The commission disagrees with NextEra and E.ON as it considers a request for full interconnection study to be insufficient evidence of a financial commitment to build a project and declines to include this standard in the financial commitment test.

RES America proposed to modify Tier 2 to include "development activities for planned expansion of existing facility with application for an interconnection agreement" as evidence of financial commitment and likelihood of completion. Invenergy proposed that, in the event the tier test is substantially met, the commission consider additional factors such as the developer's previous experience with wind developments in ERCOT; whether a project is an expansion of an existing project; and the level of investment already made in the proposed wind project. These additional criteria, Invenergy said, would give the commission more flexibility in the event a CREZ falls just short of the subsection (d)(5) criteria. Sharyland, however, opposed the addition of further criteria, especially subjective criteria, as they could delay the financial commitment proceedings and interfere with the timely processing of the CCN applications. In reply comments, E.ON agreed with Invenergy's proposal for a "back-up" provision in the event a CREZ does not meet the standards. However, in reply comments, E.ON also agreed with the many commenters, including Sharyland, who stressed the importance of readily applied, objective criteria to minimize disputes that could delay the proceedings.

Commission Response

The commission agrees with RES America that "development activities for planned expansion of existing facility with application for an interconnection agreement" may show some level of commitment, but much would depend on the nature and level of activities. The commission finds this wording too vague to be evidence of financial commitment and declines to add this standard in the financial commitment test. The commission agrees with Invenergy that, in the event the financial commitment test is substantially met, the commission may decide, based on other considerations, that the financial commitment has

sufficiently been met. However, the commission declines to adopt the additional criteria offered by Invenergy and prefers to leave open the list of additional criteria that it may consider in such situation.

RES America and Iberdrola proposed to modify the language referring to the acquisition of surface rights to include leases in subsection (d)(5)(B) and (C); Sharyland, E.ON, and Cielo also proposed to clarify and expand the types of site control instruments that will be accepted under Tiers 2 and 3. These commenters contended that the current language seems to require that developers purchase or lease acreage outright for at least 20 years, which is not industry practice. E.ON proposed that leases negotiated for a shorter term with option to extend for 20 years be accepted as the standard. Shell had a similar proposal. In reply comments, Sharyland, RES America, Horizon and Iberdola agreed with E.ON's proposal. Shell and Iberdrola believed that their acreage under lease option demonstrates an enormous financial commitment that will assist the commission in approving the CCNs. Iberdrola pointed out the self-defeating nature of a situation in which the commission is unwilling to approve the CCNs for the Panhandle CREZs transmission lines without evidence of firm commitments such as contracts for land rights that cannot be terminated, and the developers consider it too risky to make this kind of irreversible commitment unless the CCNs are approved. Horizon had similar comments. In reply comments, Oncor Cities did not dispute the practice by wind developers to initially execute short-term leases, but argued that this in fact substantiated Oncor Cities' position that such instruments make it easier for developers to change course and therefore do not constitute financial commitments.

Commission Response

The commission observes that the current standard in Tiers 2 and 3 of the proposed rule that relies on a developer's purchase or lease of acreage for a period of 20 years or more cannot be met as it does not represent industry practice. The commission declines to accept the recommendation of RES America, Sharyland, E.ON, Cielo, Horizon, and Iberdrola that the surface rights standard be modified to include short-term leases and agrees with Oncor Cities that such instruments do not constitute firm financial commitments. The commission instead concludes that Tiers 2 and 3 in the proposed rule cannot be met and therefore decides to remove them from the financial commitment test. The commission modifies subsection (d) accordingly. The commission agrees, however, with RES America, Sharyland, E.ON, Cielo, Horizon, and Iberdrola that lease agreements have some demonstrable value in calculating financial commitment. The commission will, therefore, consider leasing agreements with landowners that convey a right or option for a period of at least 20 years to develop and operate a renewable energy project in determining the amount of collateral that must be posted.

In reply comments, E.ON recommended counting installed generation and planned projects in a tier if they are "located in one or more counties that lie in whole or in part" within a CREZ.

Commission Response

The commission agrees that a project or planned project under construction located in one or more counties that lie in whole or in part within a CREZ may be counted toward the

financial commitment for that CREZ, provided that a project counted in one CREZ not be counted again in another CREZ when a county spans more than one CREZ.

E.ON suggested that the proposed rule be revised to allow non-renewable generation development in the Panhandle to be considered in determining financial commitment. In reply comments, Sharyland and Cross Texas supported E.ON's proposal.

Commission Response

The commission disagrees with E.ON that non-renewable generation projects should be considered in determining the financial commitment necessary for the approval of CREZ line CCNs and declines to incorporate this change in the rule. The commission points out that PURA §39.904(g)(2) specifies that the commission "shall develop a plan to construct transmission capacity necessary to deliver to electric customers … the electric output from renewable energy technologies in the competitive renewable energy zones."

Whether a Collateral Posting is Necessary to Demonstrate Financial Commitment

Oncor Cities urged the commission to maintain a collateral requirement for the three southern CREZs. In reply comments, NextEra disagreed and argued that operational wind generation connected to the ERCOT grid should not have to post collateral because such generation already provides the highest and most secure form of collateral. Given the high level of operational generation in the southern CREZs, NextEra added, additional collateral is unnecessary and should not be required.

BNB agreed that elimination of the collateral requirement for the Central West CREZ is justified. BNB limited its comments to the Central West CREZ because it has development interests in that zone only.

Commission Response

The commission disagrees with Oncor Cities and declines to maintain a collateral requirement for the three southern CREZs. The commission agrees with NextEra that, given the high level of operational generation and generation in advanced stages of development in the southern CREZs, the financial commitment for those CREZs is met and additional collateral is unnecessary.

Regarding the Panhandle CREZs, Oncor Cities contended that the risk to ratepayers of having to fund under-utilized transmission lines is even higher than in the southern CREZs, and urged the commission to continue to require a security deposit for these projects, either in conjunction with or in replacement of the tiered methodology set out in the proposed rule.

If the commission were to implement a security deposit, E.ON suggested it should apply to the weaker financial commitments of Tiers 2 and 3. Invenergy proposed that it be added as a requirement that complements Tier 3 and required of only those MWs that cannot otherwise fulfill the criteria listed in Tier 3. Luminant would replace Tiers 2 and 3, which it considers too weak, with a 10% security deposit.

TIEC believed that the completed projects, projects under construction, and projects with signed interconnection agreement in Tiers 1 and 2 provide sufficient proof of commitment. However, TIEC continued, other planned capacity that counts toward the Tier 2 and 3 requirements represent weaker commitment from developers and may justify additional requirements to ensure that the CREZ lines will be fully utilized.

Shell commented that it would be hard for Panhandle developers to meet any of the tiers in the three-tiered test proposed in the amendments to the rule, and proposed adding a collateral posting option for the Panhandle in the CREZ Rule to supplement the financial commitment evidence that the commission needs to approve the CREZ transmission CCN applications. In reply comments, Sharyland agreed with Shell and favored retaining the collateral as a "fall-back" option that would allow developers unable to meet the financial commitment for a particular CREZ under the three-tiered approach to nevertheless show that financial commitment exists by posting collateral. In reply comments, Cross Texas stated that if collateral were to be deemed necessary to provide evidence of financial commitment, it would support Shell's proposal. In reply comments, Oncor Cities agreed with Shell that the tiered test provides inadequate certainty, but did not agree that the collateral should be just an additional posting option. Instead, Oncor Cities would add a collateral at all three levels of the tiered test. In reply comments, ETT reiterated that it does not take a position on a collateral requirement; however, ETT agreed with Shell that a collateral posting should be an option for demonstrating financial commitment. ETT commented that if a collateral requirement or option is added, any collateral should secure all affected CREZ lines, not just those to which the generator interconnects.

BNB, CPS, Invenergy, RES America, Eurus, E.ON, Iberdrola, Cielo, Horizon, Longfellow Ranch, and Third Planet opined that a collateral posting is not required to satisfy the financial commitment showing for approval of a CCN. RES America argued that it could be a deterrent to investment and may have anticompetitive consequences if the collateral requirement could be met with a guarantee from a corporate parent. Iberdrola argued that the 10% collateral requirement contained in existing subsection (c)(6), if adopted, would tie up resources better invested more productively. Cielo and RES America agreed, and in addition RES America pointed out that a security deposit does not guarantee a project's completion if the project is determined to be uneconomic. NextEra would not add a security deposit or collateral in the rule.

Eurus qualified its opposition to a collateral requirement by saying that it would support such a requirement if it were the only way to ensure that the financial commitment necessary for the approval of CCNs for the Panhandle CREZ lines are met, so as to remove the uncertainty surrounding the transport of wind energy from the Panhandle into the load centers in ERCOT. Iberdrola had a similar comment, but qualified it by saying that any deposit scheme should be narrowly tailored in both scope and duration, and should aim to supplement the types of financial commitment evidence allowable under each tier. Higher Power opposed a security deposit requirement in addition to the tier tests. However, it would agree to a security deposit in lieu of a current tier requirement. For example, instead of an application for an interconnection agreement in Tier 3, the wind developer could provide a security deposit that would be a percentage of the cost of a finalized interconnection agreement.

Cielo and RES America would accept a collateral requirement if it was linked to dispatch priority. Horizon and NextEra made a similar suggestion in reply comments.

Invenergy and E.ON suggested the security deposit not be required of existing generation or proposed projects with an interconnection agreement and a letter of credit already posted with a TSP. In addition, in reply comments, Invenergy recommended that, if collateral is required, it should be required for only those MWs that are not supported by financial commitment evidence as set forth in subsection (d)(5).

Commission Response

The commission disagrees with BNB, CPS, Invenergy, RES America, Eurus, E.ON, Iberdrola, Cielo, Horizon, Longfellow Ranch, and Third Planet that a collateral posting is not required to satisfy the financial commitment showing for approval of a CCN. The commission agrees with Luminant and TIEC that completed projects, projects under construction, and projects with signed interconnection agreements provide sufficient proof of commitment, but that other standards listed under Tiers 2 and 3 in the proposed rule either are not firm enough as noted by Luminant, TIEC, and Oncor Cities, or cannot be met in the Panhandle CREZs as noted by Shell and Sharyland. The commission concurs with those commenters' conclusion that a collateral posting option is needed as part of the financial commitment evidence that the commission needs to approve the CREZ transmission CCN applications, and therefore adds a collateral option to the financial commitment test. The commission agrees with Invenergy and E.ON that collateral should not be required in CREZs where sufficient financial commitment is deemed to exist based

on existing projects, projects under construction, and interconnection agreements. The commission disagrees with Cielo, RES America, Horizon, and NextEra that collateral should be linked to dispatch priority because the purpose of the collateral posting is to justify the building of transmission lines that will benefit wind developers. Any consideration of dispatch priority should occur only at a time when there is evidence of excess development that cannot be resolved by market forces.

In reply comments, Horizon suggested that the amount of letter of credit or parental guarantee submitted as collateral should be used as a credit or offset to the amount of deposit that is required pursuant to an interconnection agreement with a TSP because they serve the same purpose.

Commission Response

The commission disagrees with Horizon that the amount submitted as collateral should be used as a credit or offset to the amount of deposit that is required pursuant to an interconnection agreement with a TSP. The collateral requirement is intended to ensure that the developers' generation projects will be built once the transmission lines are built, whereas the interconnection agreement deposits are intended to secure the interconnection facilities and serve a very different purpose. Therefore the commission concludes that they cannot be treated as interchangeable. However, the rule has been amended to provide a refund of collateral after an interconnection agreement is signed and collateral required by the TSP has been posted in recognition of a new level of commitment being made by wind developers.

Procedure Regarding a Collateral Requirement

Allowable Forms of Collateral Requirement

ERCOT had no position on the collateral requirement. However, if the commission were to require that wind developers deposit a collateral with ERCOT, ERCOT recommended that it be in the form of letters of credit or cash and requested that the commission describe acceptable forms of letters of credit. In reply comments, Invenergy and Horizon stated that, in addition to letters of credit and cash, other forms of collateral such as parental guarantees should be permitted. NextEra recommended letters of credit, guarantees by a parent company with an investment grade rating, and other forms of collateral approved by the commission as acceptable forms of collateral. In its reply comments, ERCOT clarified that it does not object to holding corporate guarantees as collateral, so long as it can require the depositor to change the collateral form if the credit worthiness of the guarantor becomes questionable.

Commission Response

The commission agrees that the collateral should be in the form of letters of credit or cash as proposed by ERCOT, or corporate guarantees as suggested by Invenergy, Horizon, and NextEra. If the collateral is in the form of corporate guarantee, the commission agrees to require the depositor to change the collateral form if the credit worthiness of the guarantor becomes questionable, as recommended by ERCOT. The commission modifies the rule to specify as much. The commission is aware that requiring a depositor to change the collateral form if the credit worthiness of the guarantor becomes questionable or if the

guarantor files for bankruptcy may not be easily achievable, and that an enforcement mechanism may have to be put in place to ensure the security deposits will be maintained.

What should be the Amount of Collateral Requirement

Invenergy and E.ON argue that the security deposit should be an amount of no more than $5,000 to $10,000 per MW, and it should not be required of existing generation or proposed projects with an interconnection agreement and a letter of credit already posted with a TSP. Luminant would tie the deposit to the cost of the transmission facilities, which would include all of the transmission lines and substations (minus default and priority facilities) that interconnect within the Panhandle CREZs; those that deliver renewable energy from the Panhandle CREZs to the Metroplex area; and those that connect the Panhandle CREZs to the Central CREZs. Luminant calculated a security deposit of $30,708 per MW of installed or planned capacity, based on the costs estimated in ERCOT's CREZ Transmission Optimization Study divided by the total new CREZ wind generating capacity for the two Panhandle CREZs. Although not opposing a collateral requirement, in reply comments Pattern Renewables opposed the Luminant proposal because the amount is too large and results in an excessive capital drain on the developers, which could disadvantage them compared to other developers of generation, both wind and non-wind. In reply comments, Invenergy, Horizon, and E.ON noted that Luminant's suggested collateral amount exceeds the $25,000 per MW collateral requirement that was rejected in the original CREZ rulemaking proceeding as too onerous for small developers. E.ON contended that Luminant's proposal would impose a substantial burden on Panhandle developers that would create a major barrier to entry for small developers and could jeopardize the commission's

integrated CREZ transmission plan. According to E.ON, Luminant's proposal goes beyond the requirement in PURA §39.904(g)(3), which requires the commission to consider the level of financial commitment but does not mandate substantial security deposits made years in advance from individual generators. In reply comments, Iberdrola commented that the Luminant proposal is excessive and favors a collateral posting of $5,000 to $10,000, as suggested by E.ON. Deere Wind also replied to comments regarding any collateral requirement by arguing that a collateral requirement, if included in the rule, should be reasonable and a parental guarantee should be an acceptable form of collateral.

In supplemental comments, commenters proposed collateral amounts ranging from $0.00 to $30,708 per MW of planned capacity. E.ON and Invenergy based their proposal for a collateral amount on the transmission cost they estimated for the Panhandle CREZs divided by the total MW capacity for which collateral would need to be posted to obtain a per MW amount, to which they applied a factor of 5%. These parties estimated the Panhandle CREZ cost to be $1.38 billion, lower than the estimates obtained by Luminant and Cross Texas. This is because, in calculating their estimated costs of the Panhandle CREZ improvements, they reasoned that because collateral is posted for new wind projects, they needed only to account for those lines that are most likely to benefit new wind projects in the Panhandle/South Plains region. E.ON and Invenergy recommended applying a factor of 5% to the per MW estimated transmission cost related to the Panhandle CREZs as reasonable because the commission chooses not to adopt a dispatch priority mechanism at this time. Based on these assumptions and calculations, E.ON and Invenergy proposed an amount of no more than $12,354/MW to be posted as collateral.

In supplemental comments, Iberdrola, Higher Power, Third Planet, and Eurus concurred with the collateral amount recommended by E.ON and Invenergy. Eurus commented that the amount of $12,354/MW is within the range for the collateral amounts that have been proposed in this proceeding and represents a substantial sum given the considerable investment dollars that must otherwise be raised and expended to bring a wind project to completion.

Although RES America does not support the imposition of a collateral requirement that is unaccompanied by any assurance of a dispatch priority mechanism, in supplemental comments it recommended that the collateral should be no higher than $5,000/MW.

In supplemental comments, Cross Texas calculated a collateral amount of approximately $4,500 per MW based on an assumption of a monthly revenue requirement of $25 million on a total Panhandle transmission cost of $1.5 billion. Cielo recommended a deposit amount of $25,000 per MW based on the ERCOT estimated cost of the entire CREZ transmission build out divided by the ERCOT estimated added transfer capability.

In supplemental comments, Luminant reiterated its proposal for a collateral requirement of $30,708 per MW of installed or planned capacity based on a factor of 10% to be applied to the estimated transmission costs for the Panhandle CREZs and assuming the collateral is required for 100% of the 5,584 MW capacity approved for the Panhandle CREZs. Luminant noted that if the threshold for meeting the revised financial commitment test was dropped to 50% of the approved capacity in the Panhandle CREZs, the factor applied to the transmission cost amount would in effect be reduced from 10% to 5%, bringing the effective collateral amount to $15,354 per MW

(50% of the $30,708 per MW recommended by Luminant). Luminant had concerns that a collateral requirement of less than 10% of the entire Panhandle transmission investment may be insufficient to provide assurance to ratepayers that developers would complete their projects and that the transmission investment would be used and useful. TIEC and Oncor Cities supported Luminant's proposal for a collateral requirement of $30,708/MW. TIEC noted that Luminant's proposal is consistent with the 10% pro rata requirement in the existing CREZ rule.

In supplemental comments, Shell, Horizon, and Fremantle Energy strongly opposed the imposition of a collateral requirement if the commission is not inclined to grant dispatch priority protection. They asserted that, without dispatch priority, the appropriate amount of security deposit from Panhandle CREZ developers should be $0.00 per MW.

Commission Response

The commission agrees that a collateral requirement of $30,708 per MW as proposed by Luminant exceeds the $25,000 per MW collateral requirement that was rejected in the original CREZ rulemaking proceeding as too onerous for small developers, as pointed out by E.ON, Invenergy, and Horizon. However, the commission finds that the assumptions used by Luminant to arrive at this number are reasonable and the methodology appropriate. The commission finds that, using the transmission cost per MW arrived at by Luminant and applying a 5% factor as proposed by E.ON, Invenergy and other wind developers brings the collateral amount to $15,350 per MW of planned project capacity. The commission believes that this number is reasonable and within the range of the proposals that were submitted. The commission also finds that it is reasonable to apply a

factor of 5% as opposed to the 10% factor in the current rule because the rule now adds a collateral requirement that is unaccompanied by any assurance of a dispatch priority mechanism, as pointed out by AES. The commission therefore adopts $15,350 per MW as the collateral to be deposited by wind developers with planned projects in the Panhandle CREZs. However, if the capacity is supported by a lease agreement that conveys a right or option for a period of at least 20 years to develop and operate a renewable energy project, the commission decides that the collateral amount should be reduced to $10,000 per MW, based on a conversion factor of 60 acres per MW for a wind energy project. With this combined option, the commission recognizes that existing lease agreements represent some level of financial commitment by wind developers that, when complemented with a collateral deposit, is firm enough for the commission to rely upon.

Regarding the presumption that 60 acres of land represent one MW of wind development, Cielo pointed out that this number will vary depending on the land's topography and the capacity of the turbine, and suggested adding in the rule that the presumption can be varied with evidentiary support.

Commission Response

The commission agrees that project by project, the land needed for each megawatt will vary. However, the commission adopts 60 acres per MW as the conversion factor to be used in conjunction with the posting of a reduced collateral as it is a reasonable estimate that will avoid the need for evidentiary determination for each project.

When should the Collateral be Posted, and When should it be Returned

Invenergy and E.ON proposed that the collateral be made in tranches. Invenergy suggested that 25% of the total deposit be made within 45 days of the filing of the first CCN with subsequent 25% deposits made at six month intervals, and that deposits be posted with the TSP(s) designated to build the transmission facilities to connect the generator, with whom a posting procedure is already in place. Invenergy proposed that the deposits be returned on the date the generator signs its interconnection agreement with the applicable TSP, whereas E.ON would return half of the security deposit when the developers signs the interconnection agreement and the balance when the first phase of the project's capacity is placed in service. In reply comments, Horizon recommended that the TSP should return the collateral in phases. For example, 25% of the collateral should be returned to the developer if at least 25% of the project is interconnected within one year, 50% should be returned if more than 50% of the project is interconnected within two years and so on. All remaining collateral from all developers should be returned when the capacity of all the interconnected projects exceeds 75% of the total capacity of the CREZ.

Luminant proposed that the collateral be posted within 45 days of the first CCN filing for the relevant CREZ and that it be refunded only if the developer takes service within one year after the TSP notifies the developer that the transmission system is capable of accommodating the developer's facility.

Commission Response

The commission does not agree with Invenergy's and E.ON's proposal that the collateral should be posted in tranches. The commission determines that the full collateral should be posted no later than 30 days after the commission issues an Interim Order finding sufficient financial commitment by renewable generators for the CREZ. The commission does not agree that the collateral should be refunded to the generators in a phased manner as proposed by Horizon and E.ON, but agrees that it should be returned at the time when a generator signs the interconnection agreement for its Panhandle CREZ project as proposed by Invenergy, provided that the capacity represented by the interconnection agreement matches or exceeds the amount of MWs for which collateral was posted, and after the generator posts any security deposit required by the TSP to secure the construction of collection facilities.

Should the Collateral be Deposited with ERCOT, or with the TSP

Luminant proposed that the deposits be held by TSPs in an escrow account, similar to the accounts that retail electric providers (REPs) are required to use for holding customer deposits. In reply comments, Horizon indicated its preference for the TSPs to be holders of any collateral that may be required. Invenergy suggested that any required security deposits be posted utilizing the procedures already in place for posting deposits with TSPs.

Commission Response

The commission agrees with Luminant, Horizon and Invenergy that the deposits should be posted with and held by TSPs, because TSPs already have a process to hold similar deposits by generators, and indicates as much in the rule.

Who Should be Eligible to Post Collateral

Invenergy proposed to limit eligibility to post a collateral to all developers listed in the CREZ Order that filed financial commitment evidence in the CREZ designation proceeding, and to those that "step in the shoes" of those developers should they default.

In reply comments, NextEra suggested that if additional collateral is required, and if operational projects and other eligible renewable energy projects in the CREZ are insufficient to fill the transmission capacity, then generation outside the CREZ should be allowed to post collateral and qualify for the excess capacity mechanism, (assuming that the commission approves an excess capacity mechanism for which only projects supported by collateral are eligible). In reply comments, Horizon stated that the collateral should be posted by the renewable energy developers who participated in Docket Number 33672. If the total capacity of these projects exceeds the capacity of the CREZ as determined by the commission, the capacity for each developer should be reduced proportionally until that target is met. If the total capacity of these projects is less than the CREZ capacity, then additional collateral should be accepted for additional MWs from CREZ developers in an attempt to reach the capacity limit approved for the CREZ.

Commission Response

The commission does not intend to link the posting of collateral to a dispatch priority mechanism and does not see any reason to limit eligibility to post collateral. Any generator that intends to build a renewable generation project in a designated CREZ is eligible to post an amount of collateral that represents the capacity of its planned project in MWs. The commission specifies as much in the rule.

Nature of the Financial Commitment Proceeding(s)

Cross Texas stated that the financial commitment proceeding should not be a contested case, and explained that the commission is seeking information that is primarily of an objective nature and the information is best collected, collated, and reviewed in a setting other than a full-blown contested case. In reply comments, Cross Texas added that the proceeding does not have to be a contested case as contemplated in PURA §39.003 and the determination for the Panhandle CREZs can be made in a rulemaking project. Cross Texas noted that the choice of proceeding via a rulemaking or a contested case is within the discretion of the commission, except as to those proceedings specifically set out in PURA.

Commission Response

The commission agrees with Cross Texas's interpretation of PURA §39.003 that the commission has the discretion to conduct a proceeding either through a rulemaking or a contested case. The commission has determined that the evaluation of financial

commitments for the southern CREZs was best done through this rulemaking, whereas the more difficult evaluation of the financial commitment for the Panhandle CREZs is best handled through a contested case.

Sharyland, Cross Texas and ETT pointed out the efficiency of a single proceeding to consider levels of financial commitment for the Panhandle A and Panhandle B CREZs (rather than separate proceedings for each CREZ), as many of the transmission lines are designed to serve both CREZs.

Commission Response

The commission agrees with Sharyland, Cross Texas and ETT that it will be more efficient to conduct a single proceeding to consider the levels of financial commitment for the Panhandle A and Panhandle B CREZs because it believes that it is possible to consider the financial commitment for each CREZ separately within a single proceeding. The commission specifies in the rule that there will be a single proceeding to consider the levels of financial commitment in each of the Panhandle CREZs.

Sharyland, Cross Texas, and ETT stressed the importance of a financial commitment proceeding that is completed expeditiously. Sharyland and Higher Power proposed that a specific date or time frame be set in the rule by which the financial commitment proceeding must be concluded. Because the first CCN applications must be filed on March 1, 2010, Sharyland suggested a deadline of February 28, 2010 for the final order of the proceeding and proposed rule language to this effect.

In reply comments, E.ON supported limiting the scope of the financial commitment proceeding to applying the tiers and, if necessary, the back-up provisions suggested by E.ON. E.ON also suggested two proceedings, one each for the Panhandle region and the southern CREZs region, to save time and facilitate both applications of the back-up provisions to the tiers and the contingency that one but not another CREZ in the same region fails.

Horizon disagreed with one or more proceedings to consider levels of financial commitment for the Panhandle A and Panhandle B CREZs, contending that the issue could be addressed in each of the CCN proceedings. The scope would be limited and the TSPs would simply review the affidavits indicating that commission-approved financial commitments have not diminished over time. However, in reply comments, Horizon stated that if there were to be a proceeding, it would agree with Sharyland's suggestion to limit the scope and specify a date for the conclusion of the proceeding.

Luminant suggested that the commission initiate a proceeding shortly after this rule is adopted and require developers to file a letter of intent to post their pro rata share of the required 10% collateral, as proposed by Luminant.

Commission Response

The commission disagrees with the proposal made by Sharyland and Higher Power and supported by E.ON to set a deadline for the financial commitment proceeding and declines to make this change in the rule. The commission agrees with E.ON and other commenters

that the scope of the proceeding should be limited to applying the financial commitment test and possibly other considerations as determined by the commission if one or more CREZs do not meet the test. The commission specifies as much in the rule. The commission disagrees with Horizon that the financial commitment for the Panhandle A and Panhandle B CREZs should be addressed in the CCN proceedings, because addressing the financial commitment requirement prior to the CCN proceedings will allow the commission to decide whether to proceed with the filing of the CCNs or take other action, should the financial commitment not be met. The commission also disagrees that the scope should be limited such that the TSPs would simply review the affidavits indicating that commission-approved financial commitments have not diminished over time. The commission declines to make these changes in the rule.

TIEC expressed concern that the language in subsection (d)(1) waiving the requirement that certain showings be made under PURA §37.056 for a transmission project "intended to serve a CREZ" is too broad and may provide an avenue for non-CREZ TSPs to sidestep important requirements of PURA. TIEC suggested replacing the phrase "intended to serve a CREZ" with the phrase "designated as a CREZ facility." ETT responded by arguing that TIEC's proposed change to subsection (d)(1) would unreasonably limit the commission's statutory authority.

Commission Response

The commission agrees with ETT that the language in proposed subsection (d)(1) more closely tracks the statutory language. The commission accordingly declines to change the rule as proposed by TIEC.

Commission Action in Case of Failure to Demonstrate Financial Commitment in One or More CREZs and Implication for CCNs

RES America and Horizon disagreed with the proposed language that would require the commission to order that CCNs not be filed if the financial requirement is not met, stating that this language was too prescriptive. RES America suggested that failure to satisfy the tiered-tests should result in "appropriate action by the commission." In reply comments, RES America added that this language would give the commission the flexibility to take "appropriate action" if either of the Panhandle CREZs does not meet the financial commitment requirements specified in the rule.

Invenergy made a similar recommendation and suggested additional factors that the commission may consider to determine whether the CREZ CCNs should be approved if the financial commitment requirement is not met. In reply comments, Sharyland agreed with the need for additional flexibility and supported the language proposed by RES America. In reply comments, E.ON supported the back-up provisions recommended by RES America and Invenergy in the event a CREZ does not meet the tier standards. Horizon cautioned the commission against eliminating or delaying Panhandle CREZ facilities if they do not meet the financial commitment

requirements, contending that such an action would remove the benefit of geographic diversity of supply and require ERCOT to continue to rely on a very limited source of wind generation while depriving Texas ratepayers of the economic and environmental benefits of wind resources that are the best overall in the state, and of the most beneficial and cost-effective transmission plan.

Under its proposal that wind developers be required to post a security deposit, Luminant suggested that if the developers failed to timely post the requisite collateral, the commission could take any action it deems appropriate, including, but not limited to, ordering that the relevant CCN proceedings be abated until the requisite collateral is posted, dismissing such proceedings without prejudice to re-filing upon a subsequent showing of sufficient financial commitment, or allowing a new developer to "step into the shoes" of a defaulting developer.

NextEra recommended the rule clarify that the commission will determine in the financial commitment proceeding which Panhandle CCNs will not be processed if one Panhandle CREZ fails to meet the financial commitment requirement.

E.ON commented that failure to meet the financial commitment requirement in one CREZ should not impair or delay transmission that is also needed for the other CREZ and proposed adding in the rule that CCN applications for transmission serving both CREZs should proceed if financial commitment is met for at least one of the CREZs. Cross Texas explained that there is not a one-to-one correspondence between each CREZ and each CREZ transmission facility that is related to that CREZ. In an integrated system, Cross Texas said, one cannot remove a line from the mix without impacting the integrity of the system. In reply comments, ETT shared the

concerns expressed in some of the initial comments regarding the difficulty in identifying and relating transmission lines to specific CREZs. In reply comments, Sharyland agreed and said the rule should clarify that CCN applications for lines necessary to serve either Panhandle CREZ will proceed even if one Panhandle CREZ fails to meet the financial commitment criteria. In reply comments, Oncor agreed that a finding of adequate financial commitment in either Panhandle CREZ should be sufficient to support CCN applications for both CREZs.

Commission Response

The commission agrees with RES America, Horizon, Invenergy, Sharyland, and E.ON that the proposed rule language requiring the commission to order that CCNs not be filed if a CREZ fails to meet the financial requirement test is too prescriptive. While declining to adopt the specific factors proposed by Invenergy and E.ON as back-up provisions if one or more CREZs do not meet the test, the commission agrees to relax the requirement by adding language that will allow it to consider other evidence of financial commitment that it finds relevant under PURA §39.904(g)(3), delay the filing of the CREZ CCNs, find that sufficient financial commitment exists if the CREZ is closely interrelated with another CREZ that satisfies the financial commitment test, or take other appropriate action. However, the commission disagrees with the proposal made by E.ON and Sharyland and supported by Oncor to automatically approve the CCN for lines serving one Panhandle CREZ if the other Panhandle CREZ meets the financial commitment criteria and declines to make this change in the rule. Their proposal does not represent the level of financial commitment that the commission believes is commensurate to minimize the risk to

customers that they may have to pay rates that would support the costs of unneeded facilities.

Requirement for Priority and Default Lines

AES was concerned that if the financial commitment requirement is not met for the Panhandle CREZs and the commission orders that the related CCNs not be filed, it raises a question regarding three transmission lines considered default lines or priority lines that are not in the Panhandle CREZs but relate to those CREZs. NextEra stated that the commission should find sufficient financial commitment for the default and priority lines. Oncor stated that the priority lines should not require additional evidence of financial commitment because the commission previously found that those lines are necessary to resolve existing congestion. NRG had similar concerns. NRG, In reply comments, AES added that the commission should find that all default and priority line CCNs, regardless of the CCN's location, have satisfied the requisite financial commitment. In reply comments, Sharyland, ETT, and Cross Texas agreed with Oncor's comments; Invenergy, Oncor, ETT, and Horizon agreed with NextEra's comments; and Oncor agreed with AES's comments. In its reply comments, E.ON supported recognition that priority lines have met the financial commitment test but did not share AES's and NextEra's view that the default projects have satisfied the financial commitment requirements and should therefore be exempted from the tier test proceedings. NRG requested that the commission clarify which lines are related to distinct zones or combination of zones so as to prevent these issues from being raised in the contested case hearings related to these lines. In its reply comments, E.ON disagreed with NRG's suggestion and opined that the difficult issue of which specific

transmission facilities relate to which CREZ or CREZs can be determined if and to the extent necessary in the financial commitment proceeding in the event a CREZ fails to meet the tier test.

Commission Response

The commission agrees with AES, NextEra, Oncor, and other commenters that a CCN application for transmission facilities designated as a Default Project or a Priority Project does not require additional evidence of financial commitment. The commission disagrees with E.ON that the default lines should be subject to the financial commitment test. The commission found in Docket Number 33672 that the Priority Projects "are critical to relieve current congestion that is hampering the delivery of existing wind-powered energy to the grid." The commission reiterated this finding in Docket Number 35665. In Docket Number 36146, the commission assigned the construction responsibility for the default lines to TSPs that currently own the transmission lines that require upgrades or modifications. The commission ordered this assignment to enable those TSPs to immediately begin preparations to carry out the transmission facility upgrades or modifications. Finally, as explained above, the commission finds that sufficient financial commitment has been shown for the McCamey, Central, and Central West CREZs. The commission, therefore, adds to the rule a finding that the financial commitment requirement for default and priority lines has been met. The commission declines to specify in the rule which lines are related to distinct zones or combination of zones as proposed by NRG, but instead agrees with E.ON that the question of which specific transmission facilities relate to which CREZ may be determined in the financial commitment proceeding in the event one of the Panhandle CREZs fails to meet the test.

Positions on Security Constrained Economic Dispatch (SCED)

TIEC, CPV, CPS, Austin Energy, and Reliant opined that SCED is the preferred methodology to dispatch resources and resolve congestion caused by excess development. TIEC contended that allowing the market to determine which resources are dispatched will help ensure that lower-cost generation is not prevented from accessing the CREZ lines. Absent this policy, TIEC continued, ratepayers would not only be saddled with increased transmission costs, they would also face increased energy costs. Higher Power agreed with the proposed amendment to first assess the effectiveness of SCED prior to assessing whether a priority dispatch mechanism is appropriate.

TIEC opposed any non-economic dispatch priority mechanisms as unlawful and stated that, if the commission decides to nonetheless consider one, it should do so only after it determines that SCED is not adequately resolving congestion issues.

AES, Eurus, Shell, Iberdrola, E.ON, and NextEra opposed reliance on SCED to dispatch wind because it does not address the excess wind development issue. NextEra pointed out that the reference to SCED establishes a prerequisite that can never be fulfilled, because SCED always resolves congestion, but does so without consideration of who is a free-rider and who is not. BNB, Invenergy, Iberdrola, Horizon, and Shell criticized the proposed amendment for allowing the commission to address excess development only after it has already occurred. NextEra was concerned that SCED only resolves congestion at a single moment in time and does not provide a long term policy to discourage excess capacity in a CREZ. These commenters favored instead a forward looking policy that prevents excess development from ever occurring. AES made similar suggestions in its reply comments. AES claimed that SCED is oblivious to generation

type and thus did not fulfill the overarching policy of CREZ, which was to provide renewable generators priority access to CREZ transmission or to prevent excess capacity in a CREZ.

In reply comments, Horizon argued that the Legislature would not have established a unique process for CREZ designation if the nodal market design was seen as the panacea for the adequate development of the state's wind generation resources. Horizon commented that SCED does not take into account the physical reality of the location of best wind generation resources and therefore cannot be relied on to send the proper economic signals. Only a dispatch priority mechanism would achieve the economic and environmental benefits that the Legislature sought through the creation of the CREZ process, according to Horizon. Eurus and E.ON also disapproved of the proposed insertion of the SCED mechanism as a precedent to the establishment of dispatch priority in subsection (e). Eurus feared it would increase development risk and uncertainty. In reply comments, Austin Energy disagreed with these commenters and pointed out that SCED is the most economic dispatch solution on a system-wide basis, and any deviation from SCED would degrade market outcomes and harm consumers and the market.

Commission Response

The commission agrees with TIEC, CPV, CPS, Austin Energy, and Reliant that SCED is the preferred methodology to dispatch resources and resolve congestion caused by excess development. The commission disagrees with NextEra's contention that SCED resolves congestion only at a moment in time and believes that SCED is a competitive market solution that will send correct market signals through prices to developers considering building new capacity. In addition, the commission believes that SCED is more likely than

a priority dispatch mechanism to resolve issues created by excess development in the long run as it will encourage and speed up the development of storage and possibly other technologies. The commission believes that priority dispatch interferes with market signals. The commission, therefore, disagrees with Horizon's contention that only a dispatch priority mechanism would achieve the economic and environmental benefits that the Legislature sought through the creation of the CREZ process, and believes instead that SCED will ensure that wind energy will be delivered in a manner that is most beneficial and cost-effective to the customers, as required by PURA §39.904(g).

Positions on Dispatch Priority

CPV supported the Staff's proposed modifications to subsection (e) and the deletion of the language that suggests a linkage between financial commitment and dispatch priority. CPV contended that there is no legal or equitable basis for according dispatch priority solely on evidence of financial commitment showings in Phase 1 of the Docket Number 33672 proceeding. Further, CPV contended, the commission's authority to create such a priority dispatch mechanism is limited because the commission provided no prior notice that it intended to institute dispatch priority based on financial commitment showings in the Phase 1 proceeding. Lastly, CPV noted that the showings presented in the Phase 1 proceeding are of highly variable types, amounts, and degrees of revocability and could not be readily quantified, compared, or rated against each other, and therefore could not be appropriately used to apportion limited transmission capacity.

CPS, Cielo, and Austin Energy proposed to delete subsection (e). In the alternative, Austin Energy suggested modifying subsection (e) to remove the language about limiting interconnections and establishing dispatch priority, adding that special protection schemes or other solutions should be used only to ensure reliability. Cielo reasoned that the paragraph deals with events that have not yet occurred and may never occur, which is not a proper subject for a rule. Cielo added that the parties are deeply divided on the question of the commission's statutory power to enter an order that would compromise the open access mandate in PURA, and stressed that, regardless, open access is the correct policy. In reply comments, Denton agreed that subsection (e) should be deleted or revised as suggested by Austin Energy. In reply comments, LCRA supported Austin Energy's proposal to strike subsection (e) in its entirety. In reply comments, Horizon disagreed with any proposal to eliminate subsection (e). Horizon did not object to the commission delaying a decision on the appropriate mechanism until a later date, but urged the commission to provide additional assurance of dispatch priority to wind developers in this rulemaking project by revising the rule to affirm that dispatch priority will be provided and delineating the entities that will receive the benefit of dispatch priority when it is implemented.

Luminant would eliminate the language in subsection (e) limiting physical interconnection to the CREZs as inconsistent with PURA Chapter 35, which requires the commission to ensure that an electric utility provide nondiscriminatory access to wholesale transmission service, and a similar provision in Chapter 39, which mandates access to "transmission and distribution systems for all buyers and sellers of electricity on nondiscriminatory terms."

NRG questioned the commission's authority to establish a dispatch priority mechanism other than for reasons of economic efficiency and to support grid reliability. The commission does not have the authority to establish priority based on the date the unit interconnected to the grid, and in any case, "vintage priority," NRG opined, would be unsound policy.

Penn Real Estate would remove from subsection (e) any reference to limiting interconnection.

Commission Response

The commission declines to delete subsection (e) as recommended by CPS, Cielo, and Austin Energy and supported by Denton and LCRA. In response to these commenters' concerns regarding references to limiting interconnection and establishing dispatch priority, the commission notes that the proposed changes to subsection (e) do not establish that the commission intends to limit interconnections and implement dispatch priority, but instead allow these tools to be considered by the commission if it becomes necessary to resolve issues that SCED might fail to address.

In reply comments, Iberdrola recommended the commission not adopt the proposed changes to subsection (e) related to excess development. Iberdrola believed the proposed language would delay action until an excess development problem existed. In the alternative, Iberdrola urged the commission to delay consideration of the excess development issues until after the financial commitment issues are addressed in this rule.

BNB, AES, RES America, Shell, Iberdrola, and Horizon favored a dispatch priority mechanism in subsection (e) as necessary to address both the excess supply of wind generation and the reliability of the ERCOT grid. AES and Shell believed that dispatch priority is needed to provide incentives for continued development of wind projects while at the same time discouraging excess development. In reply comments, CPS Energy opposed dispatch priority modifications to subsection (e) made by several wind developers and argued that the CREZ process was intended to address transmission planning and development of wind resources, not to create a means to give one developer a competitive advantage over another. In reply comments, Horizon justified a distinction between CREZ wind energy over non-CREZ wind energy by arguing that unlike the non-CREZ wind developers, those wind developers who actively participated in the CREZ process have dedicated significant resources in the implementation of the Legislative policies reflected in the CREZ amendments and therefore it is appropriate that non-CREZ developers not be allowed to enjoy the benefits of the CREZ facilities at the expense of the CREZ wind developers. Horizon also contended that the distinction between CREZ developers and non-CREZ developers is analogous to a distinction made by ERCOT Protocols which contain provisions in which different standards are placed on otherwise similarly situated generators based solely upon whether they were operational before or after a particular date and cited as an example the availability of pre-assigned congestion rights (PCRs) to only certain municipally owned utilities.

AES disagreed with Austin Energy's assertion that a dispatch priority mechanism would introduce unnecessary inefficiencies. On the contrary, AES contended that a dispatch priority mechanism would allow renewable generators access to load and send the correct market signals

to investors that investment in renewable generation in ERCOT will provide their anticipated return on investment.

Shell opposed the proposed amendments to subsection (e) and proposed to work with the commission to develop instead a special protection scheme (SPS) that would prevent excess development.

BNB stated that it is unfair for the commission to change the rule after BNB and others have made significant investments in their CREZ related projects, and that the commission should amend subsection (e) to state that the commission will not allow excess development to occur in a CREZ. In its reply comments, Shell commented that the need to provide regulatory certainty and mitigate curtailment in today's constrained credit and capital environment supported a dispatch priority mechanism for those developers whose early commitments and risk-taking led to the development of the CREZ transmission system.

Commission Response

The commission declines to delete the proposed changes to subsection (e) related to excess development as recommended by Iberdrola, or to state that it will not allow excess development to occur in a CREZ as recommended by BNB. The commission does not intend to interfere with the functioning of the market in anticipation of an excess development problem that may not materialize, as suggested by these commenters. The commission determines that it is appropriate to delay consideration of excess development

issues until these issues exist, and declines to include in the rule any dispatch priority mechanism as suggested by AES, Horizon, or Shell.

Commission Authority to Limit Interconnection and Implement Dispatch Priority

In reply comments, NextEra argued that if existing wind generation is replaced by newer technologies because of a lack of a dispatch priority mechanism, many existing generators will have stranded infrastructure investments, royalty owners and school districts will be deprived of revenues and customers who have signed long-term purchase power contracts with existing generators will have to shop for replacement power at higher prices. In reply comments, Shell contended that the commission has the legal authority to implement an overbuild protection mechanism in light of the non discriminatory standards in Texas law, and because PURA §39.151(i) gives the commission broad discretion to oversee the terms of generation dispatch in ERCOT.

E.ON and BNB believed that the commission has the authority to limit interconnection or adopt a dispatch priority mechanism that limits a generator's participation in the competitive market if necessary to accomplish a valid statutory purpose. BNB believed that no one disputes that a valid statutory purpose exists, and stated that the commission recognized the reasonableness of treating renewable energy developers differently based on financial commitment. E.ON added that one statutory purpose is reliability, and the other is the need to deliver renewable energy in the most beneficial and cost-effective manner. In reply comments, Oncor Cities disagreed with Shell, E.ON and Horizon on this matter, noting that the commission lacks the authority to engage in discriminatory access to transmission or dispatch based on factors other than reliability and

efficiency, and stated that doing so might discourage the efficient siting of wind facilities in the future.

In reply comments, Sharyland noted that there is no consensus on the issue of whether the commission has the authority to implement a dispatch priority mechanism, and suggested that the commission defer action on the issue to avoid delays. Because applications for CCNs will start this Fall, Sharyland urged the commission to focus on resolving issues concerning the adequacy of the financial commitment, and in particular the posting of collateral. RES America urged the commission to make no changes to current subsection (e), but rather to wait until the financial commitment issues are addressed and resolved.

Commission Response

Because the amendment does not itself establish a specific dispatch priority mechanism, the commission declines to discuss the commission's authority to implement such a mechanism.

Trigger to Initiate Proceeding to Consider Dispatch Priority

E.ON proposed that the trigger to initiate a proceeding to consider dispatch priority should be when the sum of installed generation and projects with signed interconnection agreements exceed the maximum CREZ capacity. In addition, "capacity" should refer to the actual available transmission capacity for the CREZ instead of the estimated generating capacity that was included in the CREZ designation order. In reply comments, Duke urged the commission to modify subsection (e) to add a trigger that requires the start of a commission review of CREZ over-development solutions.

Commission Response

The commission declines to add to the rule a specific trigger for initiating a dispatch priority proceeding but retains the flexibility to decide at a later date whether circumstances require the consideration of such a mechanism.

Types of Dispatch Priority Mechanisms

Under Shell's SPS proposal, a wind generator that has not posted collateral or whose financial commitment was not listed in the final order in Docket Number 33672 would be allowed to interconnect to the grid and access the CREZ facilities subject to an SPS, such that in the event of congestion caused by excessive wind generation, its generating units would be the first to automatically reduce output to prevent overloading the system. Shell admitted that the proposal would be complex to implement and require substantial additional work, but reasoned that it would assist wind developers in making better economic decisions by assigning "congestion costs" due to overdevelopment to the cost-causers, *i.e.*, the developers that "pile on" to a transmission system design based on the project information and financial commitment of CREZ developers. Shell noted that its SPS proposal could be implemented only if and when excess development occurred, and if implemented would expire after seven years. Shell insisted that such protection from unquantifiable curtailment risk is absolutely necessary for wind generators to make prudent investment decisions and to obtain external financing. In reply comments, Austin Energy questioned this assertion, pointing out that the "second movers" will be able to procure financing for their projects without a dispatch priority. Austin Energy added that the protections Shell seeks are unavailable to any investor in the ERCOT market, CREZ or otherwise. In response to Shell's proposal to use SPSs to curtail late comers in case of

congestion, ERCOT emphatically disagreed, stating that the commission should reject such an approach because it could negatively affect system reliability and will not achieve the intended purpose. Worldwide generally opposed dispatch priority proposals and specifically those of Horizon, Shell, and E.ON. Worldwide criticized those proposals for seeking "a permanently reserved portion" of the transmission capacity, attempting to discourage excess development by shutting out new competitors willing to accept lower rates of return, and seeking commission authorization to form a wind cartel with preferential transmission access. Longfellow also opposed the granting of dispatch priority to a subset of wind generators. Longfellow pointed out that PURA does not address "excess" generation of any type, so the commission should continue to let the market decide what generation and how much of it will be built to serve ERCOT. Longfellow pointed out that when the Texas electricity market was restructured, the profitability of electric generators was not guaranteed. In reply comments, TIEC argued that the dispatch priority mechanisms proposed by various wind generators are harmful to the electricity market. In reply comments, PSEG argued that Shell and BNB dispatch priority suggestions are an attack on the economic principle of Texas competitive electricity markets. PSEG argued that what Shell and BNB seek is regulatory certainty of the profitability of their investment in a competitive market.

Eurus replied to comments opposing dispatch priority generally and TIEC's arguments in particular, urging the commission to adopt a dispatch priority mechanism like the one proposed by Shell to signal to developers and financiers that orderly disposition of CREZ transmission capacity will occur. Pattern Renewables also favored the Shell proposal, however, Pattern Renewables urged the commission to defer amendments to subsection (e) until after the financial

commitments proceeding(s), at which time the commission will have the ability to consider better developed options without the time pressure imposed by those proceedings.

Horizon believed that the automated or adjusted offer curve (AOC) mechanism (a proxy curve or offer floor to be used in conjunction with the SCED mechanism that would result in late arriving generators being dispatched last) would be the best approach to provide both dispatch priority and pricing ability for wind developers who have assisted the commission in the creation of the CREZ transmission plan. However, Horizon approved of Shell's SPS proposal and thought it should be further enhanced with pre-assigned congestion revenue rights (PCRRs). Those PCRRs would be assigned to wind developers whose financial commitment evidence was cited in the commission's Order in Docket Number 33672 to provide them certainty that wind energy would be delivered all the way to the load centers (so that it would not be just wind on wind priority).

In a general response to comments favoring dispatch priority methods, LCRA stated that it does not support any kind of physical rights to transmission capacity because it would be "one of the most disruptive forms of prioritization for the SCED process."

NextEra recommended deleting any reference to SPSs in the rule for several reasons. NextEra contended that SPSs are not well suited to function as a disincentive to excess wind generation due to their complicating impacts on system planning activities and on system operations. SPSs rely on hard-tripping of generation to protect transmission equipment, and ERCOT will typically operate the system to avoid tripping the SPSs. This means that the system will be re-dispatched to avoid the approaching overload on the monitored transmission element. As a result, other

generators will be selected to curtail output, and the generators most likely to be selected for curtailment are the pre-CREZ generators on the antiquated 138-kV lines. In short, SPSs would achieve the opposite of the desired goal. In reply comments, Shell disagreed with NextEra's comments, arguing that its proposal, if implemented, would be a disincentive to wind developers and prevent excess development, and that it should not be rejected just because it is complex. Invenergy supported NextEra's suggestion that the reference to SPS in subsection (e) be deleted. Instead, Invenergy suggested that the commission take the time to further evaluate the dispatch priority proposals made by commenters and add language that would provide the commission the flexibility to implement a dispatch priority mechanism at a later date. Similarly, E.ON, in reply comments, recommended that at this time, the commission only address financial commitment criteria and defer any determination regarding a dispatch priority mechanism. However, E.ON also recommended that the commission insert in subsection (e) language asserting its statutory authority to adopt a dispatch priority mechanism, resolve the issue of dispatch priority eligibility, and remove the reference to SCED.

NextEra proposed instead to include in the rule a mechanism that relies on congestion revenue rights (CRRs). Wind CRRs would function much like the current PCRRs. They would be allocated to wind generators located in a county containing the CREZ that became operational on or before the date when wind generation capacity exceeded the planned generation capacity for that CREZ. They would allow these generators to be financially hedged against losses due to congestion. The proposed CRRs would be allocated for a period of five years after the transmission lines of a particular CREZ become operational. NextEra described several advantages of using CRRs to address excess wind development, including the fact that ERCOT

already has experience using this congestion management tool since the concept is already in place for non-opt-in entities (NOIEs). In addition, NextEra contended that it would provide just enough discipline to pace the interconnection of variable generation technologies and enhance ERCOT's ability to integrate wind generation additions as the transmission network is expanded and improved. NextEra believed that the commission has the authority to adopt its proposed CRR excess capacity proposal in this rulemaking. In reply comments, LCRA argued that NextEra's excess capacity proposal contradicts PURA §39.904(g)(2) and results in greater costs and loss of benefits from competition for customers. LCRA also argued that the allocation of CRRs to certain developers favors those developers against their competitors and results in a transfer of wealth from load to those favored developers. LCRA opposed NextEra's characterization of its CRR proposal as similar to the non-opt-in entities' pre-assigned CRRs for their remote generation because the pre-assignment to the non-opt-in entities protected existing resources built prior to the advent of competitive electricity markets in Texas. ERCOT responded that NextEra's proposal is feasible in ERCOT's existing CRR system. ERCOT does caution that the available transmission capacity depends on forecasts and certainty of the full rights cannot be assured.

Commission Response

Because the commission has decided not to include dispatch priority in the rule, the commission need not select among the dispatch priority mechanisms suggested by commenters.

Eligibility for Dispatch Priority

Invenergy would specify in the rule who is eligible for dispatch priority and which dispatch priority mechanism will be used. E.ON was in agreement, adding that a statement of eligibility would by itself serve as a deterrent to excess development. Invenergy and E.ON agreed that all current generation and planned projects located in a CREZ should be eligible for dispatch priority, provided such projects were proposed by a party listed in the CREZ Order and the projects satisfied one or more tiers listed in subsection (d)(2).

AES stated that it had not settled for a specific dispatch priority mechanism, but suggested that whatever mechanism is used, it should result in a dispatch hierarchy that prioritizes existing wind generators that provided testimony in Docket Number 33672 first, followed by planned wind energy projects that participated in that proceeding, followed by existing wind projects that did not participate, followed by planned projects that did not participate. Penn Real Estate also thought the rule should specify that a dispatch priority mechanism, if implemented, should benefit wind generators that provided testimony in Docket Number 33672. In reply comments, E.ON strongly disagreed with these recommendations because 1) there was no statutory basis for limiting dispatch priority to financial commitments made at the initial zone designation stage; 2) the current subsection (e) does not give exclusive priority to planned projects described in Docket Number 33672 but instead considers financial commitments at different stages as a basis for dispatch priority; 3) excluding or subjugating existing generation would be inconsistent with the Order in Docket Number 33672, which recognized the need to give the highest priority to building transmission critical to relieve current congestion that is hampering the delivery of existing wind-powered energy to the grid; and 4) failing to recognize installed generation would

retroactively punish wind developers who made the full financial commitment to invest in Texas. In reply comments, Deere Wind also disagreed, arguing that if the commission adopts a dispatch priority mechanism to address any problems arising from excess wind generation development, the criterion used to assign the priority should be demonstration of financial commitment in the CCN cases, not any demonstration or participation in a previous commission proceeding. Deere Wind reasoned that granting priority on the basis of a past event denies a generator adequate notice to participate.

In its reply comments, NextEra was willing to modify the eligibility criteria for its proposed dispatch priority mechanism to include developers that were listed in the financial commitment findings in the order in Docket Number 33672 in addition to renewable generation that is operational and connected to the ERCOT grid.

Commission Response

A determination regarding eligibility for dispatch priority does not need to be made as the commission has declined to include a dispatch priority mechanism in the rule.

Evidence that a Dispatch Priority is Needed

As evidence that a priority dispatch mechanism is needed to prevent excess development, Iberdrola and Horizon argued that the total demand for transmission in the three southern CREZs already exceeds by a considerable amount the total new transmission capacity planned for those CREZs. They pointed out that the only CREZ in which development has not outpaced the planned construction of new transmission is the McCamey CREZ, in which the commission has

implemented a dispatch priority mechanism similar in concept to the types of dispatch restrictions that Horizon and others have been seeking under the label "dispatch priority." Austin Energy disagreed with this conclusion, pointing out that the Tradable Generation Rights (TGRs) that were granted to wind generators in the McCamey area applied to all wind generators in a non-discriminatory manner and no wind generator benefited from preferential treatment, and was therefore not comparable to the dispatch priority mechanism sought by these commenters.

Commission Response

The commission disagrees with Iberdrola and Horizon that there is already evidence of excess development that cannot be resolved by market mechanisms in the three southern CREZs, as the transmission lines for these CREZs have not yet been built and the SCED mechanism has not been tested. The contention by these commenters that the TGRs granted to wind generators in the McCamey area are similar in concept to the dispatch priority mechanisms they seek is not relevant to this rule as the commission has declined to include a dispatch priority mechanism in the rule.

In support of its request for protection against risks posed by late arrivers, Shell cited two cases in which the Federal Energy Regulatory Commission (FERC) approved exclusive subscriptions of transmission capacity by wind generators that made early and significant commitments to produce energy and help finance the development of the transmission line (the "anchor-tenant" concept). Whereas subsequent non-anchor generators were not prevented from physical interconnection to the transmission, according to Shell, they did so at terms that were less advantageous. Austin Energy disagreed that these cases could be used as precedents to justify

priority access or priority dispatch for wind developers in ERCOT because, in the two referenced cases, the wind developers contributed half the capital toward the project in return for the right to purchase half the line's capacity, whereas in ERCOT, transmission is paid for by load. In reply comments, PSEG said that the "anchor-tenant" model to allocate transmission rights would violate Texas law because Texas law prohibits physical transmission rights.

Commission Response

The commission determines that Shell's suggestion that the "anchor-tenant" concept constitutes a precedent for the use of dispatch priority to protect early developers from risks posed by late arrivers is not relevant to this rule as the commission has declined to include a dispatch priority mechanism in the rule.

Iberdrola further argued that a dispatch priority mechanism that favors early movers was needed on fairness ground, because late-arriving generators could purposely locate further out on the system so that they would have lower shift factors on the transmission limiting element, which would cause SCED to unfairly dispatch the free-riders while curtailing the early movers. NextEra made similar comments. Horizon made similar comments in its reply comments.

Commission Response

The commission recognizes the difficulty faced by early arrivers because any new generation project that sites in the same vicinity at a later date will have an impact on dispatch that could not be anticipated by the earlier generators. However, the commission

determines that it is preferable to allow the competitive market to determine winners and losers initially. The commission should only intervene when there is evidence that the competitive market fails to resolve issues regarding excess development. The commission believes that the proposed language in subsection (e) allows for such intervention if it becomes necessary to resolve issues of excess development.

Miscellaneous

Cielo suggested that the commission provide in the rule a numerical value for the transmission capacity it has ordered for the Panhandle A and B CREZs, to simplify the evidentiary standard for each CREZ and eliminate any possible confusion. In reply comments, Sharyland agreed and suggested that the numerical values be 3,191 MW for Panhandle A, and 2,393 MW for Panhandle B (as determined in Docket Number 33672.) In its reply comments, E.ON agreed with Cielo's recommendation that the rule should specify numerical megawatt capacities for each of the CREZs to remove any ambiguity about the 50%, 75%, and 100% tier standards that must be met.

Commission Response

The commission agrees with Cielo, Sharyland, and E.ON and adds the megawatt capacity of each Panhandle CREZ in the rule to remove any ambiguity about the 50% target sought by the financial commitment standards.

ETT asked the commission to provide assurance that the lines serving the Panhandle CREZs will qualify for rate recovery under PURA §36.053(d). In reply comments, Cross Texas agreed and

asked that the commission confirm that this provision will apply to the work currently done by selected TSPs towards the filing of their respective CCNs according to the schedule set by the commission in Projects Number 36801 and 36802.

Commission Response

The commission determines that the assurance sought by ETT and Cross Texas regarding rate recovery is outside the scope of this rule and declines to modify the rule to include such language.

All comments, including any not specifically referred to 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 amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 39.101(b)(3), 39.151, and 39.904 (Vernon 2007 & Supplement 2009) (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 adopt 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; §39.151 provides the commission with authority over electricity dispatch and grid reliability in ERCOT and over the accounting for the production and delivery of electricity

among generators and all other market participants in ERCOT; and §39.904 provides the commission with the authority to adopt rules necessary to administer and enforce the programs to promote the development of renewable energy technologies and requires the commission to designate competitive renewable energy zones and develop a plan to construct transmission capacity necessary to deliver electric output from renewable energy technologies to electricity customers in a manner that is most beneficial and cost-effective to the customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.101, 39.151, 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 for designating a CREZ.**

(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.

(d) **Certificates of convenience and necessity.**

(1) Not later than one year after a commission final order designating a CREZ, each TSP selected to build and own transmission facilities for that CREZ shall file all required CREZ Certificate of Convenience and Necessity (CCN) applications. The commission may grant an extension to this deadline for good cause. The commission may establish a filing schedule for the CCN applications.

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

(3) In determining whether financial commitment for a CREZ is sufficient under PURA §39.904(g)(3) to grant CCNs for transmission facilities for the CREZ, the commission shall consider the following evidence of financial commitment by renewable generators:

(A) capacity represented by installed generation located in one or more of the counties that lie in whole or in part within the CREZ;

(B) capacity represented by generation projects under construction that are located in one or more of the counties that lie in whole or in part within the CREZ and that will be operational within six months of the final order in a financial commitment proceeding initiated pursuant to paragraph (6) of this subsection. Evidence that the project will be operational within six months may include documentation showing that a construction contractor has been hired, that preliminary site work has begun, that the project financing has closed, or similar indicators of the status of the project.

(C) capacity represented by planned generation projects that are located in one or more of the counties that lie in whole or in part within the CREZ and that have a signed IA with a TSP that has been defined in subsection (a)(2)(E) of this section designated to build and own transmission facilities for that CREZ; and

(D) capacity represented by collateral posted by generators for the CREZ that complies with paragraph (7) of this subsection.

(4) Financial commitment for a CREZ is sufficient under PURA §39.904(g)(3) to grant CCNs for transmission facilities for the CREZ if the sum of the renewable generating capacity under any combination of paragraph (3)(A), (B), (C), and (D) of this subsection is at least 50% of the designated generating capacity for the CREZ. Fifty percent of the designated generating capacity for the Panhandle A CREZ approved by the commission in Docket Number 33672 shall be considered to be 1,595.5 MW. Fifty percent of the designated generating capacity for the Panhandle B CREZ approved by the commission in Docket Number 33672 shall be considered to be 1,196.5 MW.

(5) Installed renewable generation, renewable generation projects under construction, and planned renewable generation projects with signed IAs in the McCamey, Central, and Central West CREZs approved by the commission in Docket Number 33672 satisfy the financial commitment test set forth in paragraph (4) of this subsection for those CREZs and therefore financial commitment by renewable generators for those CREZs is sufficient under PURA §39.904(g)(3) to grant CCNs for transmission facilities for those CREZs. This finding of sufficient

financial commitment shall be recognized in the CCN proceedings for transmission facilities for those CREZs and shall not be addressed further in those proceedings.

(6) Commission staff shall initiate a single proceeding for the commission to determine whether there is sufficient financial commitment under PURA §39.904(g)(3) by renewable generators for the Panhandle A and Panhandle B CREZs approved by the commission in Docket Number 33672 to grant CCNs for transmission facilities for those CREZs. If the commission determines that there is sufficient financial commitment for one of those CREZs, that finding shall be recognized in the CCN proceedings for transmission facilities for that CREZ, as identified in the commission's order in the proceeding initiated pursuant to this paragraph, and shall not be addressed further in the CCN proceedings. If the commission determines that the Panhandle A or Panhandle B CREZ does not satisfy the financial commitment test in paragraph (4) of this subsection, the commission may:

(A) consider other evidence of financial commitment that the commission finds relevant under PURA §39.904(g)(3);

(B) find that the financial commitment requirement for that CREZ has been met if the commission determines that significant financial commitment exists in that CREZ and that the CREZ is sufficiently interrelated with a CREZ that has satisfied the financial commitment test;

(C) delay the filing of CREZ CCN applications for that CREZ until the commission conducts a subsequent proceeding in which it finds sufficient

financial commitment for that CREZ in accordance with the financial commitment provisions of this subsection; or

(D) take other appropriate action.

(7) A renewable generator that elects to post collateral pursuant to paragraph (3)(D) of this subsection shall comply with the following requirements:

(A) The renewable generator shall provide a letter of intent to post collateral in a proceeding conducted pursuant to paragraph (6) of this subsection. The renewable generator shall then post the collateral no later than 30 days after the commission issues an interim order finding sufficient financial commitment by renewable generators for the CREZ. If the renewable generators post sufficient collateral, the commission may enter a final order with findings that reflect the adequacy of the financial commitment for the CREZ. If the renewable generators do not post sufficient collateral, the commission may enter a final order with findings that reflect the inadequacy of the financial commitments for the CREZ.

(B) A renewable generator shall post collateral equal to $15,350 per MW of its planned project capacity, or $10,000 per MW if the capacity is supported by leasing agreements with landowners that convey a right or option for a period of at least 20 years to develop and operate a renewable energy project based on a conversion factor of 60 acres per MW for a wind energy project.

(C) A renewable generator planning to build a project in a CREZ shall post collateral with the TSP with which it will interconnect in the CREZ or, if

the TSP with which it will interconnect has not been determined, with any TSP that has been designated to build and own transmission facilities for that CREZ.

(D) A renewable generator may post collateral by providing a cash deposit, letter of credit, or guaranty agreement from an entity with an investment-grade credit rating. A TSP shall require a renewable generator that posts a guaranty agreement to provide another form of collateral if the guarantor loses its investment-grade credit rating or declares bankruptcy. If the renewable generator does not provide another form of collateral, the commission may take appropriate action including seeking administrative penalties.

(8) A TSP that receives collateral from a renewable generator pursuant to paragraph (7) of this subsection shall handle that collateral in accordance with the following provisions.

(A) If a renewable generator signs an IA with the TSP and posts any collateral required by the TSP to secure the construction of collection facilities, the TSP shall return to the generator all collateral received from that generator.

(B) If a renewable generator does not sign an IA with the TSP and post any collateral required by the TSP to secure the construction of collection facilities within 90 days after the TSP notifies it that the transmission system is capable of accommodating the renewable generator's renewable energy facility, the TSP shall retain the collateral received from the

generator as an offset to the cost of the transmission facilities the TSP constructs for the CREZ and shall take all reasonable measures to execute any non-cash collateral.

(9) In a CREZ CCN application, a TSP may propose modifications to the transmission facilities described in a 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.

(10) Findings in Docket Numbers 33672, 35665, and 36146 and the commission's finding in paragraph (5) of this subsection establish that the level of financial commitment is sufficient under PURA §39.904(g)(3) to grant CCNs for transmission facilities designated as a Default Project in ordering paragraph 1 of the Order in Docket Number 36146 and for transmission facilities designated as a Priority Project in finding of fact 136 in the Order on Rehearing in Docket Number 33672. This finding of sufficient financial commitment shall be recognized in all pending and future CCN proceedings for Default and Priority Projects and shall not be addressed further in those proceedings.

(e) **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, and if the commission determines that the security constrained economic dispatch mechanism used in the power region to establish a priority in the dispatch of CREZ resources is insufficient to resolve the

congestion caused by excess development, the commission may initiate a proceeding and may consider limiting interconnection to and/or establishing dispatch priorities regarding the transmission system in the CREZ, and identifying the developers whose projects may interconnect to the transmission system in the CREZ under special protection schemes.

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 §25.174 relating to Competitive Renewable Energy Zones is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE _____ DAY OF _____ 2009.

PUBLIC UTILITY COMMISSION OF TEXAS

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BARRY T. SMITHERMAN, CHAIRMAN

_____

DONNA L. NELSON, COMMISSIONER

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KENNETH W. ANDERSON, JR., COMMISSIONER