

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

**Subchapter I. TRANSMISSION AND DISTRIBUTION.**

**DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES.**

**§25.216. Selection of Transmission Service Providers.**

- (a) **Application.** This section applies to any transmission service provider (TSP), or entity seeking to become a TSP, that submits an application to construct, operate, and maintain one or more competitive renewable energy zone (CREZ) Transmission Plan (CTP) Facilities.
- (b) **Purpose.** The purpose of this section is to state the requirements that govern the selection and performance of one or more TSPs, or entities seeking to become TSPs, that will be responsible for the construction, operation, and maintenance of CTP Facilities.
- (c) **Definitions.** The following words and terms when used in this section have the following meaning unless the context indicates otherwise:
- (1) **CREZ Transmission Plan (CTP)** -- The transmission capacity plan required by §25.174(c)(2) of this title (relating to Competitive Renewable Energy Zones).
  - (2) **CTP Facility** -- A transmission line with or without a substation or any other transmission facility as identified in the CTP and designated by the commission.
  - (3) **CTP Proposal** -- An application to serve as a Designated TSP for one or more CTP Facilities that is submitted by an Interested TSP.
  - (4) **Designated TSP** -- An Interested TSP that the commission has designated to construct, operate, and maintain one or more CTP Facilities.
  - (5) **Interested TSP** -- An entity seeking status as a Designated TSP that meets the definition of a TSP as defined by §25.5(143) of this title (relating to Definitions) or that commits to meeting such definition as necessary to fulfill its obligations as a Designated TSP.
  - (6) **Funds from operations** -- Net income from continuing operations, depreciation and amortization, deferred income taxes, and other non-cash items.
  - (7) **Total debt** -- Long-term debt, current maturities, commercial paper, and other short-term borrowings.
  - (8) **Historically underutilized business** -- Defined by Texas Government Code §481.191, as it may be amended.
  - (9) **Interest** -- Gross interest without subtracting capitalized interest and interest income.
- (d) **Selection process.** The following steps outline the process the commission will employ to select Designated TSPs.
- (1) The commission will initiate a proceeding that will invite each Interested TSP to file a CTP Proposal. The presiding officer shall set a procedural schedule that will enable the commission to decide the issues in the proceeding within 180 days after the deadline to file CTP Proposals unless good cause exists for setting a different schedule. The presiding officer may sever issues or CTP Proposals into separate proceedings.
  - (2) For each existing CTP Facility requiring an upgrade or modification, the commission will select the owner of the facility to be the Designated TSP for the CTP Facility, unless the owner requests that a different Interested TSP be selected or good cause exists to select another transmission service provider.
  - (3) For each new CTP Facility, the commission will select a Designated TSP pursuant to subsection (e) of this section.
- (e) **Selection of Designated TSP.** The commission will evaluate each CTP Proposal received by considering, at a minimum, the current and expected capabilities of the Interested TSP to finance, license, construct, operate, and maintain the CTP Facility or Facilities in the most beneficial and cost-effective manner and the expertise of the Interested TSP's staff, the Interested TSP's projected capital

## **CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

### **Subchapter I. TRANSMISSION AND DISTRIBUTION.**

#### **DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES.**

##### **§25.216(e) continued**

costs and operating and maintenance costs for each CTP Facility, the Interested TSP's proposed schedule for development and completion of each CTP Facility, the Interested TSP's financial resources, the Interested TSP's expected use of historically underutilized businesses unless the Interested TSP is an electric cooperative or municipally owned utility, and the Interested TSP's understanding of the specific requirements to implement the CTP Facilities in its CTP Proposal and, if applicable, the Interested TSP's previous transmission experience and the Interested TSP's historical operating and maintenance costs for its existing transmission facilities.

- (1) Each Interested TSP shall submit with its CTP Proposal the following information:
  - (A) A description of the process that the Interested TSP will use for the preparation of any required application for a certificate of convenience and necessity (CCN).
  - (B) For each CTP Facility transmission line, a general description of the proposed structure types (lattice, monopole, etc.) and composition (wood, steel, concrete, hybrid, etc.), conductor size and type, and right-of-way (ROW) width.
  - (C) The projected in-service date of each CTP Facility.
  - (D) A discussion of the type of resources, including relevant capability and experience (in-house labor, contractors, other TSPs, etc.) contemplated for use by the Interested TSP for the licensing, design, engineering, material and equipment procurement, ROW and land acquisition, construction, and project management related to the construction of each CTP Facility.
  - (E) A discussion of the type of resources contemplated by the Interested TSP for operating and maintaining each CTP Facility after it is placed in-service.
  - (F) A discussion of the capability and experience of the Interested TSP that would enable it to comply with all on-going scheduling, operating, and maintenance activities required for each CTP Facility, including those required by policies, rules, guidelines, and procedures established by the Electric Reliability Council of Texas independent system operator or other independent organization, if applicable.
  - (G) Resumes for key management personnel that will be involved in obtaining a transmission CCN and constructing, operating, and maintaining each CTP Facility.
  - (H) A discussion of the Interested TSP's business practices that demonstrates that its business practices are consistent with good utility practices for proper licensing, designing, ROW acquisition, constructing, operating, and maintaining CTP Facilities. The Interested TSP shall also provide the following information for the current calendar year and the five calendar years immediately preceding its filing under subsection (d)(1) of this section.
    - (i) A summary of law violations by the Interested TSP found by federal regulatory agencies, state public utility commissions, other regulatory agencies, or attorneys general.
    - (ii) A summary of any instances in which the Interested TSP is currently under investigation or is a defendant in a proceeding involving an attorney general or any state or federal regulatory agency, for violation of any laws, including regulatory requirements.
  - (I) For each CTP Facility transmission line, the estimated direct costs in current dollars to construct (including design, engineering, materials, labor, transportation and other necessary expenses but excluding ROW and land acquisition) representative tangent, 30-degree, and 90-degree structures suitable for the type of conductor that

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

**Subchapter I. TRANSMISSION AND DISTRIBUTION.**

**DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES.**

**§25.216(e)(1)(I) continued**

- would be used. The estimated costs shall be provided for each type of structure that might be used such as lattice, monopole, etc.
- (J) For each CTP Facility transmission line, a detailed explanation and estimate of the Interested TSP's anticipated average annual operating and maintenance cost-per-mile in current dollars for the line for the first 10 years of operation. Also, the Interested TSP shall provide the actual average direct operating and maintenance cost-per-mile incurred by the Interested TSP for each of the last five calendar years for all transmission lines owned and operated by the Interested TSP that have the same voltage as the CTP Facility transmission line.
  - (K) The Interested TSP's overhead rate for managing third-parties, if the Interested TSP contemplates the use of third-parties to perform any function related to the licensing, construction, operation, or maintenance of the CTP Facility and the willingness of the Interested TSP to maintain the overhead rate for the managing of the third-party operation and maintenance for a fixed period of time after the CTP Facility has been energized.
  - (L) The Interested TSP's preexisting procedures and historical practices for acquiring ROW and land and managing ROW and land acquisition for transmission facilities. If the Interested TSP does not have such preexisting procedures, it shall provide a detailed description of its plan for acquiring ROW and land and managing ROW and land acquisition.
  - (M) The Interested TSP's preexisting procedures and historical practices for mitigating the impact of transmission facilities on affected landowners and for addressing public concerns regarding transmission facilities. If the Interested TSP does not have such preexisting procedures, it shall provide a detailed description of its plan for mitigating the impacts on affected landowners and addressing public concerns regarding CTP Facilities.
  - (N) A proposed financial plan that confirms that:
    - (i) adequate capital resources are available to the Interested TSP to allow the Interested TSP to finance the CTP Facilities, and
    - (ii) no significant negative impact on the creditworthiness or financial condition of the Interested TSP, as demonstrated in paragraphs (2)(A)-(D) of this subsection, will occur as a result of the Interested TSP's construction, operation, and maintenance of the CTP Facilities. In evaluating an Interested TSP's financial plan the commission will consider the terms of the proposed financing available to the Interested TSP including variable and fixed cost financing, short-term and long-term maturities and an Interested TSP's willingness and ability to fix the cost of financing for a fixed period of time.
  - (O) An affidavit by an officer of the Interested TSP stating that the information in the application is true and that the Interested TSP will comply with the applicable rules in this title and with the Public Utility Regulatory Act (PURA).
  - (P) Other evidence, at the discretion of the Interested TSP, which supports its selection as a Designated TSP.
  - (Q) Unless the Interested TSP is an electric cooperative or municipally owned utility, a description of the Interested TSP's use of historically underutilized businesses for the last five calendar years and expected use of historically underutilized businesses.

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

**Subchapter I. TRANSMISSION AND DISTRIBUTION.**

**DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES.**

**§25.216(e)(1) continued**

- (R) Subparagraphs (A) through (N) of this paragraph do not apply to a CTP Proposal that is supported or unopposed by all parties in the proceeding by the deadline to file the CTP Proposal.
- (2) The Interested TSP must establish that it has adequate financial resources as described in subparagraphs (A)-(G) of this paragraph.
- (A) The Interested TSP holds a CCN issued by the commission for electric transmission facilities, or the Interested TSP holds a CCN issued by the commission to provide retail electric service and operates electric transmission facilities in Texas;
- (B) The Interested TSP or its parent company or controlling shareholder or another company providing a bond guaranty or corporate commitment to the Interested TSP under subparagraph (E) of this paragraph must demonstrate an investment-grade credit rating as defined in subparagraph (E) of this paragraph; or
- (C) The Interested TSP must establish that it has:
- (i) assets less any goodwill but including regulatory assets in excess of liabilities of at least 40% of the projected total cost of the CTP Facility on its most recent audited financial statements; and
  - (ii) the following minimum financial ratios, adjusted to exclude transition bonds of subsidiaries, obtained from the Interested TSP's most recent audited financial statements:
    - (I) funds from operations-to-interest coverage of 1.5x;
    - (II) funds from operations-to-total debt of 10%; and
    - (III) total debt-to-total capital no greater than 65%.However, the commission may choose not to require compliance with the minimum financial ratios if the Interested TSP cannot meet them because of non-recurring events that are projected to be favorable to ratepayers and the Interested TSP's long-term operations and financial condition, such as a large asset addition to its rate base.
- (D) Notwithstanding subparagraphs (A)-(C) of this paragraph, the commission may determine that an Interested TSP is eligible for selection as a Designated TSP if the Interested TSP provides evidence satisfactory to the commission that it has the capability to finance the proposed CTP Facility it proposes to construct, operate, and maintain.
- (E) For an Interested TSP to establish its investment-grade credit rating, it may rely upon its own investment-grade credit rating or a bond, guaranty, or corporate commitment of an investment-grade rated company. The determination of such investment-grade quality will be based on the credit ratings provided by Standard & Poor's (S&P), Moody's Investor Services (Moody's), or any other nationally recognized rating agency. The minimum investment credit ratings that will satisfy the requirements of this paragraph include "BBB-" for S&P, "Baa3" for Moody's, or their financial equivalent. If the relied-upon rating agency suspends or withdraws the investment grade credit rating, the Interested TSP shall provide alternative financial evidence within ten days of such suspension or withdrawal.
- (F) To the extent an Interested TSP is an electric utility as defined in PURA §31.002(6) and relies on an affiliated transmission and distribution utility for credit, investment, or other financing arrangements, it shall demonstrate that any such arrangement complies with §25.272(d)(7) of this title (relating to Code of Conduct for Electric Utilities and their Affiliates).

**CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.**

**Subchapter I. TRANSMISSION AND DISTRIBUTION.**

**DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES.**

**§25.216(e)(2) continued**

- (G) The Interested TSP shall provide a summary of any history of bankruptcy, dissolution, merger, or acquisition of the Interested TSP or any predecessors in interest for the current calendar year and the five calendar years immediately preceding its filing under this subsection (d)(1) of this section.
- (f) **Performance of Designated TSP.**
- (1) If the commission determines that a Designated TSP has failed to submit a CCN application in compliance with the order designating it for a CTP Facility, the commission may revoke the designation awarded to it, and select another entity for the CTP Facility.
- (2) Within six months of the date the commission grants the CCN for CTP Facilities, the Designated TSP shall, based on the latest available information, file with the commission the following information.
- (A) The estimated total cost for each CTP Facility in the following categories:
- (i) CCN acquisition;
  - (ii) ROW and land acquisition;
  - (iii) engineering and design;
  - (iv) procurement of material and equipment; and
  - (v) construction of facilities.
- (B) An implementation schedule for each CTP Facility that provides start and completion dates for the following four major functions:
- (i) engineering and design;
  - (ii) ROW and land acquisition;
  - (iii) material and equipment procurement; and
  - (iv) construction of facilities.
- The implementation schedule shall also include the estimated in-service date of the CTP Facilities.
- (3) During implementation of each CTP Facility, the Designated TSP shall, within 30 days of becoming aware of any implementation schedule change that is greater than 60 days for the estimated dates provided pursuant to paragraph (2)(B) of this subsection, file with the commission a detailed explanation of the reasons for the change.
- (4) If the commission determines that the Designated TSP has failed to comply with the CCN order for the CTP Facility, the commission may revoke the CCN.
- (5) Each Designated TSP shall file an updated total cost for each of its CTP Facilities requiring a CCN, one year after CCN approval and annually thereafter until the CTP Facility is placed in-service.
- (g) **Filing requirements.**
- (1) Notwithstanding §25.174(c)(4) of this title, the commission may establish and amend a filing schedule for the submission of CCN applications for CTP Facilities.
- (2) A Designated TSP shall use the commission form entitled “Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line Pursuant to P.U.C. Subst. R. 25.174” when filing a CCN application for a CTP Facility.
- (3) A Designated TSP filing a CCN application for a CTP Facility shall also file all direct testimony in support of the application at the time the application is filed.