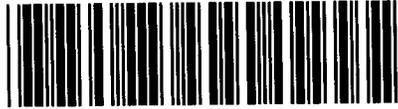


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PROJECT NO. 40000

COMMISSION PROCEEDING TO
ENSURE RESOURCE ADEQUACY
IN TEXAS

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PUBLIC UTILITY COMMISSION
OF TEXAS

2013 DEC 16 2:32
FILING CLERK

**SOUTH TEXAS ELECTRIC COOPERATIVE INC.'S
COMMENTS ADDRESSING COMMISSIONER ANDERSON'S QUESTIONS
CONCERNING ELECTRIC COOPERATIVES**

Comes Now South Texas Electric Cooperative, Inc. (STEC) and files its comments addressing the questions posed by Commissioner Anderson on November 15, 2013 concerning resource adequacy in Texas. These comments address only the three questions concerning electric cooperatives, both as NOIES and competitive electric cooperatives. STEC has filed joint comments with the TRAM Advocates to address many of the other questions. STEC appreciates the opportunity to address these three important questions. In support thereof, STEC shows as follows:

1. DOES THE PUC HAVE THE AUTHORITY TO REQUIRE ELECTRIC COOPERATIVES TO SHARE THE COST OF ANY RESOURCE ADEQUACY CONSTRUCT?

STEC submits that the PUC has the authority to authorize ERCOT pursuant to Section 39.151(e) of PURA to charge all wholesale buyers and sellers a reasonable and competitively neutral rate to cover ERCOT's cost of any resource adequacy construct. Certainly, electric cooperatives would be included under those allowed to be charged. If electric cooperatives who are wholesale buyers and sellers are not included in the charges of the rate, it would no longer be a competitively neutral rate. STEC would note that electric cooperatives have

willingly shared in the cost of all resource adequacy constructs in the past and there is no reason to suggest they would not do so for any future resource adequacy constructs.

2. TO MINIMIZE MARKET POWER ABUSE CONCERNS SHOULD GENERATORS BE REQUIRED TO DIVEST THEMSELVES OF ANY LSE? SHOULD NON-OPT-IN ENTITIES (NOIES) BE EXEMPT FROM THIS OBLIGATION?

The Commission does not have the power or authority to require a generation and transmission (G&T) electric cooperative to divest any of its member load serving entities. Neither does it have the authority nor the power to order a distribution cooperative that owns generation to divest itself of its load serving assets. The electric cooperative does have to report information regarding its generation ownership and electric sales to the Commission pursuant to Section 39.155 of PURA to enable the Commission to assess market power. It must also observe the code of conduct established by the Commission to protect against anticompetitive practices pursuant to Section 39.157(e) of PURA. However, since a G&T electric cooperatives' ownership of generation is for it to be delivered to its members, it would be most unusual for it to have the magnitude of available generation to engage in market power abuse.

STEC was established, as were all G&T electric cooperatives, by distribution electric cooperatives (LSEs), to provide generation and transmission services for those distribution cooperatives that established the G&T electric cooperative. In return, STEC's distribution cooperatives entered into full

requirement contracts for energy with the G&T cooperative. The full requirement contracts became a significant component for the financing of the generation asset of the G&T electric cooperative. In fact, when STEC received its financing for generation assets from Rural Utility Services (RUS) or its predecessor, its member distribution cooperatives were required to sign a document to support the loan.

The legislature was cognizant of the structure and relationship of distribution cooperatives and G&T cooperatives as well as the relationship between them and their lenders when they passed legislation creating a competitive wholesale generation market. Not only did the legislature in Section 41.055(6) of PURA give the electric cooperative's Board of Directors exclusive jurisdiction over control of resource acquisitions and any related expansion programs, it also made sure that certain rights of electric cooperatives would not be adversely affected by Senate Bill 7 by creating competition. Chapter 41 of Subtitle B – Electric Utilities, which comprises Chapters 31 through 41, concerns electric cooperatives and competition.

Section 41.101(a) of PURA says, "This subtitle may not interfere with or abrogate the rights or obligations of parties, including a retail or wholesale customer, to a contract with an electric cooperative or its subsidiary."

Clearly, the Commission does not have the power to nullify the full requirement contracts between the G&T electric cooperative and its member cooperatives. This prohibition applies whether the member cooperative is a NOIE or a competitive distribution cooperative. Nueces Electric Cooperative is

an electric cooperative that has entered competition. However, all of its retail customers, whether residing within its certificated area or outside of its certificated area, are members of the cooperative and are represented on its Board of Directors. Nueces has a full requirement contract with STEC.

In addition, Section 41.103 of PURA says, "Nothing in this subtitle or any rule adopted under this subtitle shall impair contracts, covenants, or obligations between an electric cooperative and its lenders and holders of bonds issued on behalf of or by the electric cooperative."

Electric distribution cooperatives that have secured financing for their own generation or where the G&T has secured financing to build generation to supply its member cooperatives would have their financing impaired if the Commission ordered the divestiture of the load serving entity. Again this prohibition would apply whether the electric cooperative was a NOIE or a competitive electric cooperative.

3. TO MINIMIZE CAPACITY MARKET MANIPULATION, SHOULD GENERATORS PARTICIPATING IN ANY CAPACITY AUCTION BE REQUIRED TO DIVEST THEMSELVES OF ANY LSE? SHOULD NOIES BE EXEMPT FROM THIS OBLIGATION?

STEC submits that the Commission also lacks the power or authority to prohibit electric cooperatives from participating in any capacity auction unless they divest themselves of any LSEs whether the LSE be a NOIE or a competitive electric distribution cooperative. The prohibitions against interference with contracts and protection of bondholders discussed above also apply in this

instance. In addition, the Legislature also protected the electric cooperatives access to the wholesale market.

Section 41.102 of PURA says, "Nothing in this subtitle or any rule adopted under this subtitle shall limit the access of an electric cooperative or its subsidiary, either on its own behalf or on behalf of its customers, to the wholesale electric market."

STEC submits that this prohibition protects electric cooperatives access to all aspects of the competitive wholesale market. The capacity auction would be created to ensure that all LSEs, including NOIES and competitive electric distribution cooperatives have the ability to provide reliable electric service. Thus, whether it is the G&T electric cooperative seeking access to the capacity auction to ensure resource reliability for its member distribution cooperatives or an electric distribution cooperative not affiliated with a G&T electric cooperative seeking access for its own use could not be prohibited from participating in the capacity auction.

Respectfully submitted,



(with permission of:)

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