



OPEN MEETING COVER SHEET

DRAFT PRELIMINARY ORDER

MEETING DATE: May 29, 2020

DATE DELIVERED: May 21, 2020

AGENDA ITEM NO.: 6

CAPTION: *Docket No. 50790 – Joint Report and Application of Entergy Texas, Inc., and East Texas Electric Cooperative, Inc., for Regulatory Approvals Related to Transfers of the Hardin County Peaking Facility and a Partial Interest in Montgomery County Power Station*

DESCRIPTION: Draft Preliminary Order

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Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: David Hrncir
Commission Advising

RE: *Joint Report and Application of Entergy Texas, Inc. and East Texas Electric Cooperative, Inc. for Regulatory Approvals Related to Transfers of the Hardin County Peaking Facility and a Partial Interest in Montgomery County Power Station, Docket No. 50790, SOAH Docket No. 473-20-3737, Draft Preliminary Order, May 29, 2020 Open Meeting, Item No. 6.*

DATE: May 22, 2020

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the May 29, 2020 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the May 29, 2020 open meeting.

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**PUC DOCKET NO. 50790
SOAH DOCKET NO. 473-20-3737**

JOINT REPORT AND APPLICATION	§	PUBLIC UTILITY COMMISSION
OF ENTERGY TEXAS, INC. AND EAST	§	
TEXAS ELECTRIC COOPERATIVE,	§	OF TEXAS
INC. FOR REGULATORY APPROVALS	§	
RELATED TO TRANSFERS OF THE	§	
HARDIN COUNTY PEAKING	§	
FACILITY AND A PARTIAL	§	
INTEREST IN MONTGOMERY	§	
COUNTY POWER STATION	§	

DRAFT PRELIMINARY ORDER

On April 28, 2020, Entergy Texas, Inc. and East Texas Electric Cooperative, Inc. (ETEC) jointly filed a report and application for the transfer of facilities, the amendment of Entergy Texas's certificate of convenience and necessity (CCN), and other regulatory approvals. The underlying transactions involved in this docket are a proposed acquisition by Entergy Texas of ETEC's Hardin County Peaking Facility and a transfer to ETEC of a partial interest in Entergy Texas's Montgomery County power station. The applicants seek a finding under Public Utility Regulatory Act (PURA)¹ § 14.101 that Entergy Texas's acquisition of the Hardin facility is consistent with the public interest, and the applicants request that the Commission amend Entergy Texas's CCN under PURA §§ 37.056 and 39.452(j) to include the Hardin facility. The applicants also request a determination under PURA § 37.058(c) that the full acquisition cost of the Hardin facility is recoverable as invested capital for ratemaking purposes. In addition, the applicants request authorization for Entergy Texas to transfer to ETEC the CCN rights corresponding to a partial interest in the Montgomery County power station. As part of that authorization, the applicants seek a determination under PURA § 37.154 that ETEC can provide adequate service after the transfer is complete.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

I. Procedural History

On April 28, 2020, Entergy Texas and ETEC jointly filed the report and application to initiate this proceeding. In Order No. 1 filed on May 1, 2020, the Commission administrative law judge (ALJ) ordered Commission Staff to file comments and a recommendation on the sufficiency of the proposed notice by May 12, 2020 and to file comments and a recommendation on the sufficiency of the application by May 19, 2020. However, in Order No. 2 filed on May 13, 2020, the Commission ALJ extended those deadlines to June 2, 2020 and June 9, 2020, respectively.

In Order No. 3 filed on May 15, 2020, the Commission ALJ granted the motions to intervene filed by the following parties: the cities served by Entergy Texas;² Texas Industrial Energy Consumers; and the Office of Public Utility Counsel. On May 14, 2020, the Commission filed an order that required Entergy Texas and ETEC, and allowed Commission Staff and any other interested party, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by May 20, 2020. Entergy Texas, ETEC, and Commission Staff timely filed lists of issues. On May 20, 2020, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH).

II. Deadline for Decision

Under PURA § 37.058(c) and 16 Texas Administrative Code (TAC) § 25.101(b)(2)(A), the Commission must render a decision approving or denying the application of an electric utility to amend a CCN for an existing generating facility no later than the 181st day after the date a complete application for that amendment is filed. If the presiding officer finds the application complete, the deadline in this docket will fall on a weekend, and therefore under 16 TAC § 22.4(a), the Commission must render a decision by October 26, 2020.

III. Description of the Transactions

The Hardin facility is located in Hardin County, Texas and comprises two combustion turbine generation units totaling 147 megawatts (MW). ETEC currently owns the Hardin facility,

² The cities served by Entergy Texas that were granted intervention in this docket were the following: Cities of Anahuac, Beaumont, Bridge City, Cleveland, Dayton, Groves, Houston, Huntsville, Liberty, Montgomery, Navasota, Nederland, Oak Ridge North, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Roman Forest, Shenandoah, Silsbee, Sour Lake, Splendora, Vidor, and West Orange.

which has been in full commercial operation since 2010. In the proposed transactions, Entergy Texas will acquire the Hardin facility for its net book value at the time of closing, which is estimated at \$36 million, plus transaction costs of \$2.7 million and a \$5.3 million contingency for unidentified costs. Thus, the total estimated acquisition cost would be \$44 million. With respect to its acquisition of the Hardin facility, Entergy Texas seeks a determination that the acquisition is in the public interest under PURA § 14.101 and requests an amendment to its CCN to include the facility under PURA §§ 37.056 and 39.452(j). Entergy Texas also seeks a determination that the full acquisition cost of \$44 million is recoverable as invested capital for ratemaking purposes under PURA § 37.058(c).

The Montgomery County power station is a 993-MW combined-cycle turbine generation facility being constructed in Willis, Texas. The power station is expected to be in commercial operation in 2021. In Docket No. 46416, the Commission amended Entergy Texas's CCN to include the Montgomery County power station.³ Entergy Texas is now proposing to sell to ETEC a minority interest in the power station that is equivalent to 75 MW for \$71.1 million, with Entergy Texas still retaining the exclusive right to manage, administer, and control the operation and management of the power station. In this proceeding, the applicants are requesting approval under PURA § 37.154 to transfer the CCN rights with respect to those 75 MW from Entergy Texas to ETEC. As part of that approval, they are seeking a determination that ETEC can provide adequate service after the transaction is complete.

IV. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.⁴ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Is the application sufficient?

³ *Application of Entergy Texas, Inc. to Amend its Certificate of Convenience and Necessity to Construct Montgomery County Power Station in Montgomery County*, Docket No. 46416, Order (Jul. 28, 2017).

⁴ Tex. Gov't Code § 2003.049(e).

2. Have Entergy Texas and ETEC provided notice that complies with PURA and Commission rules with respect to each component of the proposed transactions?
3. What is the proposed date for the closings of the proposed transactions?
4. What are the current ownership structures of the Hardin facility and the Montgomery County power station, respectively, and what will be the ownership structures if the proposed transactions occur?

Hardin Facility Transaction – Public Interest Determination (PURA § 14.101)

5. Has Entergy Texas complied with the reporting requirements under PURA § 14.101 and 16 TAC § 25.74(b)?
6. What is the total estimated cost of Entergy Texas's proposed acquisition of the Hardin facility?
 - a. Is the estimated cost reasonable under PURA § 14.101?
 - b. Does the total estimated cost for the acquisition exceed the total plant in service minus accumulated depreciation of the acquired facilities? If so, by what amount?
7. What is the total estimated cost, if any, for additional facilities such as, but not limited to, transmission facilities necessary to ensure the Hardin facility will serve Texas customers in a cost-effective manner?
8. Is it in the public interest under PURA § 14.101 for Entergy Texas to acquire the Hardin facility? In addressing this issue, please address the following non-exhaustive list of factors:
 - a. What is the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged, transferred, or consolidated, including any additional facilities such as, but not limited to, transmission facilities necessary to serve Texas customers?
 - b. Will the acquisition adversely affect the health or safety of customers or employees?
 - c. Will the acquisition result in the transfer of jobs of Texas citizens to workers domiciled outside of the state?
 - d. Will the acquisition result in a decline of service?
 - e. Is the amount that Entergy Texas is receiving equal to the reasonable value of the assets when it sells, leases, or transfers assets?

- f. What is the effect of the acquisition on Texas customers if the proposed transaction is approved?
9. What is the effect on any affected utility in MISO if Entergy Texas's proposed acquisition of the Hardin facility is approved? In addressing this issue, please address the following non-exhaustive list of factors:
 - a. What effect, if any, would the acquisition have on energy prices?
 - b. What effect, if any, would the acquisition have on congestion charges?
 - c. What effect, if any, would the acquisition have on reliability-must-run designations of generation units?
 - d. What effect, if any, would the acquisition have on satisfying reserve requirements?
10. What is the effect on reliability in the MISO transmission systems or the costs for MISO to operate its system if Entergy Texas's proposed acquisition of the Hardin facility is approved?
 - a. What effect, if any, would the acquisition have on transfers of power and their associated costs as between the MISO north and the MISO south sub-regions?
11. Did Entergy Texas correctly apply MISO's resource-adequacy requirements in determining its capacity needs?
12. What will be Entergy Texas's source of fuel to operate the Hardin facility?
13. What benefits, if any, to Texas customers will result from Entergy Texas's acquisition of the Hardin facility?
 - a. Over what period of time will the benefits occur?
 - b. What are the benefits of the acquisition to ETEC and the customers of its members?
 - c. What is the reasonable estimate of the amount of the benefits that result from this acquisition?
 - d. What benefits, if any, cannot be quantified?
 - e. Do the benefits of the acquisition to Texas ratepayers exceed the corresponding costs and risks to those same ratepayers? How should benefits that cannot be quantified be addressed in this evaluation?

- f. What methods, if any, are necessary to ensure that ratepayers receive the benefits of this acquisition?
 - g. Does the acquisition cause Texas ratepayers to bear transaction costs unrelated to corresponding benefits to Texas ratepayers?
 - h. Do the benefits of the acquisition to Texas ratepayers exceed the corresponding costs and risks to those same ratepayers? If so, over what period of time?
14. If Entergy Texas's acquisition of the Hardin facility is found not to be in the public interest, how will the financial implications of the transaction, if any, be addressed to eliminate unreasonable costs in future ratemaking proceedings?

Hardin Facility Transaction – CCN Amendment (PURA §§ 37.056 and 39.452(j))

15. Is Entergy Texas's acquisition of the Hardin facility necessary for the service, accommodation, convenience, or safety of the public?
16. How, if at all, does Entergy Texas's membership in MISO affect whether the proposed acquisition of the Hardin facility is necessary for the service, accommodation, convenience, or safety of the public? In answering this issue, please address the following factors:
- a. The availability of day-ahead and real-time markets;
 - b. The location of the Hardin facility in relation to any transmission constraints in MISO and the effect on congestion charges or other types of charges in MISO related to scheduling or delivering the power from this facility to serve consumers in Texas;
 - c. Whether the Hardin facility will aggravate or relieve any charges or fees in MISO; and
 - d. Whether any additional transmission facilities will be required to ensure cost-effective delivery of power to consumers in Texas and, if so, whether any activities have begun in MISO to lead to the construction of such facilities.
17. Does acquisition of the Hardin facility satisfy Entergy Texas's identified reliability needs? Does acquisition of the Hardin facility improve the reliability of Entergy Texas's service? If so, how would reliability be improved, and is the proposed acquisition of the Hardin facility the most cost-effective alternative for Entergy Texas to meet reliability needs?

Adequacy of existing service

18. Is Entergy Texas currently providing adequate service?

Need

19. Has Entergy Texas demonstrated a need for the additional capacity?

- a. If so, is acquiring the Hardin facility a prudent alternative to meet that need for additional capacity?
- b. How much additional capacity does Entergy Texas need to serve its customers, and when is that need, if any, anticipated?

20. What alternatives to the acquisition of the Hardin facility were considered to satisfy any identified need for additional service? Was purchase of capacity from a competitive generator, including an Entergy-affiliated competitive generator, considered?

Effect of granting the CCN on Entergy Texas and other electric utilities

21. What is the effect on any affected utility in MISO if the proposed acquisition of the Hardin facility is approved?

Effect on customers, the community, and the environment

22. Will granting the certificate improve service or lower the cost of service to consumers in the area?

23. In addition to the factors listed above, please address any other relevant factors, including the following:

- a. Community values;
- b. Recreational and park areas;
- c. Historical and aesthetic values; and
- d. Environmental integrity.
 - i. Will acquisition of the Hardin facility change Entergy Texas's plans for retiring or modifying any other generation facilities in a manner that affects environmental integrity?

Renewable Energy

24. To the extent applicable, what is the effect of granting the certificate on the ability of this state to meet its goals of adding renewable energy resources under PURA § 39.904(a)?

Miscellaneous Issue

25. What conditions, reporting requirements, or reviews, if any, should the Commission impose if it conditionally approves the application?

Hardin Facility – Recoverable Invested Capital (PURA § 37.058(c))

26. What amount, if any, of the acquisition cost of the Hardin facility is recoverable by Entergy Texas as invested capital for ratemaking purposes?

- a. What is the net book value of the Hardin facility?
- b. What amount, if any, of the acquisition cost of the Hardin facility is an acquisition adjustment?
- c. What amount of the acquisition cost of the Hardin facility represents transaction costs?
 - i. What types of costs are included in those transaction costs?
 - ii. Have those costs actually been incurred?
 - iii. Should the Commission find that transaction costs are recoverable as invested capital for ratemaking purposes?
- d. What amount of the acquisition cost of the Hardin facility represents a contingency for unidentified costs?
 - i. What types of costs, though unidentified, compose the contingency amount?
 - ii. Are the actual amounts of the contingency costs known?
 - iii. How should the Commission treat any difference between the proposed contingency costs and the actual contingency costs?
 - iv. Should the Commission find that a contingency for unidentified costs is recoverable as invested capital for ratemaking purposes?

27. What other rate-case-related issues should be considered in this proceeding so that all attendant effects of Entergy Texas's acquisition of the Hardin facility are appropriately considered?

Transfer of CCN Rights Related to the Montgomery County Power Station (PURA § 37.154)

28. What interest in the Montgomery County power station are the applicants proposing to transfer from Entergy Texas to ETEC, and what is the purchase price?
29. With respect to the Montgomery County power station, will ETEC have any rights or obligations related to decisions about future operations (including cessation of operations), maintenance, repairs, addition investments, or other similar matters?
30. What is Entergy Texas's proposed regulatory accounting treatment of the gain on its sale of a partial interest in the Montgomery County power station? Should the Commission approve that regulatory accounting treatment?
31. Should Entergy Texas's CCN rights with respect to the interest in the Montgomery County power station that is proposed to be transferred in this proceeding be transferred to ETEC and included in ETEC's CCN?
 - a. After the interest in the Montgomery County power station is transferred to ETEC, will ETEC be able to provide adequate service?
 - b. Should the Commission prescribe any conditions on the transfer of the CCN rights?

Other Regulatory Approvals

32. From what other regulatory authorities, including independent system organizations, must Entergy Texas, ETEC, or an entity affiliated to either of those entities seek approval to close on Entergy Texas's acquisition of the Hardin facility or on the transfer of an interest in the Montgomery County power station from Entergy Texas to ETEC?
 - a. Has Entergy Texas or ETEC filed applications for any necessary regulatory approvals? If so, when were the applications filed?
 - b. Which regulatory authorities have approved applications relating to Entergy Texas's acquisition of the Hardin facility or the transfer of an interest in the Montgomery County power station from Entergy Texas to ETEC? Which ones have disapproved such an application? When is action anticipated on any applications that have not yet been approved or disapproved?
 - c. If any regulatory authority, including the Federal Energy Regulatory Commission, does not approve Entergy Texas's acquisition of the Hardin facility or the transfer of an interest

in the Montgomery County power station from Entergy Texas to ETEC, should the transactions proceed? How should this docket proceed?

- d. Has Entergy Texas or ETEC made any commitments related to the proposed transactions to any other regulatory authority? If so, what are those commitments, and would it be appropriate to condition any approvals in this docket on similar commitments?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

V. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of _____ 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER