

PROJECT NO. 39797

RULEMAKING TO IMPLEMENT §
SB 365 & SB 981 RELATING TO §
DISTRIBUTED GENERATION §
§

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

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PUBLIC UTILITY COMMISSION
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REPLY COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION

SEIA and its member companies offer these reply comments related to Project No. 39797 establishing rules for implementing the provisions of SB 981 and SB 365. SEIA would like to reiterate the comments it has already provided and ask that the Public Utility Commission of Texas (“PUCT”) consider them carefully as SEIA’s reply comments focus on the initial comments filed by El Paso Electric Company (“EPE”) and the effect of what EPE asserts in its filing.

OVERVIEW

EPE asserts that it is exempt from the distributed renewable generation (“DRG”) rules being considered here by virtue of the statutory provisions in PURA, Section 39, Subchapter L, which applies only to EPE. SEIA is concerned that EPE’s interpretation of the statute unnecessarily establishes two different definitions of “distributed renewable generation owner” (“DRGO”) within Chapter 39. While creating a separate DRG interconnection process for EPE may legitimately address their unique needs, the assertion that the DRGO definition in Section 39.554 is somehow “more limited” is erroneous and inconsistent with the legislature’s intent.¹ EPE’s desire that they be governed by a more restrictive DRGO definition not only contradicts the intent of SB 981, but is also contrary to the intent behind the legislation establishing Section

¹ The bill analysis for the enrolled version of SB 1910 which established Section 39.554 of PURA makes no mention of creating a more restrictive definition of DRGO and there is no testimony to that effect either.

39.554.² Interpreting the DRGO definition in Section 39.554(a)(2) as more restrictive than the one included in Section 39.916(a)(2) would serve to limit rather than expand the opportunities for installing distributed solar generation in a region that has the greatest solar potential in the state, and the greatest potential to save consumers' money on their electric bills over time. SEIA believes this directly contradicts the legislative intent related to interconnecting DRG in Texas.

ANALYSIS

While not specifically stated in EPE's argument that it is statutorily exempt from the DRG interconnection requirements in Section 39.916—the DRGO definition applied to every other Texas utility—SEIA assumes the authority EPE uses for this claim lies in the statutory provisions found in Section 39.552(b). Section 39.552(b) provides a blanket exemption from certain provisions in Chapter 39 until EPE implements customer choice. This language has become boilerplate for legislation postponing the transition to competition for utilities outside the Electric Reliability Council of Texas (“ERCOT”). It is important to note that all of the major utilities outside of ERCOT have inserted provisions postponing or otherwise altering the requirements for their transition to competition. However, none of them have sought to establish a new DRGO definition, except EPE, where arguably the greatest potential for distributed solar installations per capita exists.

The divergent definition of DRGO is found in Section 39.554 which includes the new interconnection rules specific only to EPE. What EPE does not disclose in its comments is that the statutes they rely on to exclude themselves from these proposed rules were part of SB 1910

² Based on discussions with Sen. Rodriguez and his staff. Sen. Rodriguez was the author of SB 1910 which established Section 39.554 in PURA.

by Rodriguez during the last legislative session and were passed one day before SB 981 was finally passed.³

SB 1910 was originally designed to address EPE's inability to implement customer choice and set new standards for meeting its deadlines for a transition to competition. The relative provisions on distributed generation were included at the request of Sen. Rodriguez, who wanted to expand solar installations in El Paso and require EPE to remove barriers to that expansion.⁴ It is SEIA's belief that Sen. Rodriguez never intended to create inconsistent definitions of DRGO, and neither he nor Sen. Carona intended for EPE nor any other utility to be provided a different or more restrictive definition of what constitutes a DRGO.

For the most part, SEIA does not object to the legislature establishing a unique set of DRG guidelines if circumstances call for it. However, if the DRGO definition applicable to EPE is narrower than the one established for the rest of the state, it will limit the market-based options for DRG customers, and add to the cost of installing DRG systems in EPE's service territory. There is no technical reason or practical argument for why EPE should have a more restrictive DRGO definition or why the definition in SB 981 should not apply to them. In fact, without all of the various categories of market participants and registrations contained in ERCOT, the very simple DRGO definition used in Section 39.554 should allow at least the same ownership structures as the new definition in Section 39.916.

Without the DRG provisions added in SB 1910 combined with the exemption provision in Sec. 39.552(b), the definitions in SB 981 and the rules proposed in this proceeding would have applied to EPE. It is of further note that SB 1910 incorporates a variety of definitions and procedures from Section 39.916 while exempting EPE from the more detailed, market-based

³ SB 1910 was reported "Enrolled" on 5/26/2011 and sent to the Governor on 5/27/2011. SB 981 was reported "Enrolled" on 5/27/2011 and sent to the Governor on 5/30/2011.

⁴ Based on discussions with Sen. Rodriguez's staff on 1/30/2012.

DRGO definition established for the rest of the state. Again, SEIA believes this was not the legislature's intent.

PRAYER

SEIA respectfully requests that the PUCT determine the legislative intent behind the conflicting DRGO definitions and explore any legal or administrative options for reconciling the two definitions so that the same opportunities for installing DRG that are available to every other electric customer in Texas are available to EPE customers as well. Should the PUCT determine that the DRGO definition in Section 39.916 does not apply to EPE, SEIA asks that the PUCT determine that regardless of whether EPE is exempt from the DRGO definition proposed in this rulemaking, the definition contained in Section 39.554 is no more restrictive than the definition contained in Section 39.916. Finally, the PUCT should take action to ensure that any DRG ownership allowed by Section 39.916 is also allowed by Section 39.554.

Respectfully submitted,

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