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Texas Electric and Gas Regulatory Overview:

A Summary of Public Utility Commission of Texas and Railroad Commission Administrative and Judicial Decisions for the Year 2020

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TABLE OF CONTENTS

I. Introduction 4

II. Texas Electric Overview 4

A. PUCT Pauses Service Cutoffs in Light of COVID-19 Pandemic for Six Months 4

B. Generation CCNs 5

1. El Paso Electric Company Obtains Unanimous Approval for New Power Station in El Paso County 5

2. PUCT Denies SWEPCO's Wind Power Request 6

C. Rate Cases 6

1. SWEPCO Proposes 15% Rate Change for Texas Customers 6

2. AEP Texas' Rate Case Approved by PUCT 7

3. CenterPoint's Rate Case Approved by PUCT 7

D. Mergers and Acquisitions 8

1. El Paso Electric Company 8

2. PNM Resources 8

E. Battery Storage 9

F. Other Notable PUCT Projects 9

1. Implementation of Real-Time Co-Optimization in the ERCOT Market 9

2. Revisions to Rate Filing Package for Investor Owned Transmission and Distribution Utilities 10

G. PUCT Rulemakings 10

1. Rulemaking Regarding Load Transfer Between Power Regions 10

2. Rulemaking Related to Advanced Metering 11

3. Rulemaking Related to Cybersecurity Monitor 11

4. Rulemaking Related to Broker Registrations 12

5. Rulemaking Related to Electric Line Safety 12

6. Rulemaking Related to Generation Cost Recovery Factor 13

III. Texas Electric Case Law Update 13

A. *In re Texas-New Mexico Power Company*, 579 S.W.3d 784 (Tex. App.—Houston [1st], 2019, pet. granted June 12, 2020); *In re Oncor Electric Delivery Co., Inc.*, No. 05-19-00288-CV, 601 S.W.3d 903, 2019 Tex. App. LEXIS 6272 (Tex. App.—Dallas, 2019, pet. granted June 12, 2020); *In re CenterPoint Energy Houston Electric, Inc.*, No. 01-19-00478-CV, 601 S.W.3d 904, 2019 Tex. App. LEXIS 7078 (Tex. App.—Houston [1st], 2019, pet. granted June 12, 2020) 13

B. *NextEra Energy Capital Holdings In. et. al v. Walker et. al*, 2020 WL 3580149 (W.D. Tex. 2020). 14
C. *Southwestern Electric Power Company v. Lynch*, 595 S.W.3d 678 (Tex. 2020). .15
D. *Low Income Consumers v. Public Utility Commission of Texas*, 2020 WL 2071753 (Tex. App. — Austin, 2020). 16
E. *Entergy Texas, Inc. v. Public Utility Commission of Texas*, 2020 WL 3525484 (Tex. App.—Houston [1st Dist.], 2020)....17
F. *NextEra Energy, Inc. v. Public Utility Commission of Texas*, 2020 WL 1150799 (Tex. App. —Houston [14th Dist.] 2020)....18
G. *Electric Reliability Council of Texas, Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 552 S.W.3d 297 (Tex. App.—Dallas, 2018)....19
H. *Texas Industrial Energy Consumers, et al. v. Public Utility Commission of Texas*, 2018 WL 3353225 (Tex. App.—Austin, 2018)....20
IV. Texas Oil & Gas Overview....21
A. The Railroad Commission During the Pandemic 21
B. Motion for Market-Based Proration....22
C. Flaring....24
1. Flaring background....24
2. The *Exco* flaring cases 25
3. Flaring discussed at the market demand proration hearing 25
D. Amendments to Statewide Rule 40....26
E. Allocation Wells 26
F. Discrimination and Similarly-Situated Shippers 27
G. Pipeline Right-of-Way Lawsuit 28
V. Conclusion 28

Texas Electric and Gas Regulatory Overview:
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I. Introduction

This update summarizes important Texas electric and oil and gas regulatory proceedings at the Public Utility Commission of Texas (PUCT) and the Railroad Commission (RRC) for the year 2020 and highlights key electric and oil and gas decisions by Texas courts for the same period. This overview is not meant to address all regulatory proceedings during the period, but rather emphasizes high profile regulatory proceedings and cases.[1]

II. Texas Electric Overview

A. PUCT Pauses Service Cutoffs in Light of COVID-19 Pandemic for Six Months

On March 26, 2020, the Public Utility Commission of Texas (the Commission or PUCT) responded to Texas Governor Greg Abbott's declaration of emergency with a series of actions designed to mitigate the impact of COVID-19 on power, water, and sewer customers in Texas. The PUCT Commissioners voted unanimously to issue orders to temporarily suspend a series of rules pertaining to disconnection of utility service for non-payment. The PUCT orders required Retail Electric Providers (REPs) operating within the Electric Reliability Council of Texas (ERCOT) market to suspend late fees and provide deferred payment plans to residential customers in threat of disconnection. Customers at risk of disconnection because of unemployment due the pandemic were encouraged to reach out to their REPs to request a deferred payment plan. Additionally, the orders prohibited integrated electric utilities outside of the ERCOT market whose rates are set by the PUCT, such as Entergy, El Paso Electric, SPS, and SWEPCO, from charging late fees or disconnecting customers for non-payment during the pandemic. The Commissioners' orders were effective for six months.

The Commissioners also established the COVID-19 Electricity Relief Program, a fund through which REPs could recover a reasonable portion of the cost of providing those uninterrupted services to customers facing financial hardship. The money for this fund was acquired through the proceeds of a 33 cent per megawatt hour charge billed by Transmission and Distribution Utilities (TDUs). This program was designed to help eligible residential customers with electric bills received on or after March 26, 2020. The program ended on September 30, 2020 and reportedly protected over 600,000 households from disconnection. Over $50 million of bill payment assistance was provided through the program.[2]

On August 27, 2020, the Commissioners approved a timeline for winding down the Electricity Relief Program, allowing disconnections for non-payment to resume on October 1,

[1] The views and opinions included in this update are solely those of the author and do not reflect the official position of Jackson Walker LLP or its clients. The author would also like to thank her colleagues Jennifer Ferri, Alicia French and Alisha Mehta for their contributions to the case summaries presented in this article.
[2] *Agency Report to the 87th Legislature*, Project No. 50475, Draft of the Biennial Agency Report to the 87th Legislature (Oct. 9, 2020).

2020. Customers are required to be provided with notice prior to this disconnection of at least ten, but no more than thirty, days in advance.

Additionally, with regard to filings, the PUCT temporarily suspended the obligation to file hard copies of documents and instead only required e-filing. PUCT Staff has been working remotely since March 2020. As of November 2020, these changes were still in place.[3]

B. Generation CCNs

1. El Paso Electric Company Obtains Unanimous Approval for New Power Station in El Paso County

On November 22, 2019, El Paso Electric Company (EPE) filed an application to amend its Certificate of Convenience and Necessity (CCN) to build, own, and operate an approximately 228-megawatt (MW) natural-gas-fired generating unit, known as the Newman Unit 6. Retail competition has not yet been implemented within EPE's service area and as a result, EPE continues to provide bundled, regulated service to its customers in Texas. EPE's load forecasts indicate that the utility will need additional capacity with daily cycling ability of 50 MW by 2022 and 320 MW by 2023. To meet this need, EPE issued a request for proposals in June 2017. EPE received 81 proposals from 36 companies, which included a combination of solar-power, gas-fired, wind power, and power storage technology sources. EPE's generation project group also submitted two self-build options for the generating unit. Ultimately, EPE selected one of its self-build proposals.

The plan for Newman Unit 6 drew significant opposition from the city and local environmentalists. City officials contend that EPE should hold off on its plan until more is known about how the COVID-19 pandemic will impact its power needs and load forecasts. A one-day hearing on the merits was held in this docket on June 9, 2020. Ultimately, on October 16, 2020, the Administrative Law Judges (ALJs) decided that EPE's load forecasts confirmed the need for Newman Unit 6 and recommended approval of EPE's self-build plan. The estimated overall cost of the construction of Newman Unit 6 is approximately $158 million. EPE hopes to have the new generator in operation by May 2023.

EPE's proposed project still requires approval from the New Mexico Public Regulation Commission, which is expected to vote on the plan in November 2020. This approval is necessary because EPE also provides retail electric service to customers in the Las Cruces, New Mexico area. Similar to the situation in Texas, the Las Cruces city government, the New Mexico attorney general, and various environmental groups in New Mexico oppose EPE's plan.[4]

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[3] *See Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020); Commissioner Memorandum (Mar. 24, 2020); Order Directing Certain Actions and Granting Exceptions to Certain Rules (Mar. 26, 2020); Order Related to COVID-19 Electricity Relief Program (Mar. 26, 2020).

[4] *See Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for an Additional Generating Unit at the Newman Generating Station in El Paso County and the City of El Paso*, Docket No. 50277, Final Order (Oct. 16, 2020).

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