



Filing Receipt

Received - 2022-05-24 12:29:34 PM

Control Number - 51812

ItemNumber - 243

PROJECT NO. 51812

**ISSUES RELATED TO THE STATE § PUBLIC UTILITY COMMISSION
OF DISASTER FOR THE §
FEBRUARY 2021 WINTER § OF TEXAS
WEATHER EVENT**

**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.’S NOTICE OF
PLANNED IMPLEMENTATION OF DEFAULT UPLIFT INVOICE PROCESS
AND, TO EXTENT NECESSARY, REQUEST FOR GOOD CAUSE EXCEPTION**

Electric Reliability Council of Texas, Inc. (ERCOT) provides this Notice of Planned Implementation of Default Uplift Invoice Process to the Public Utility Commission of Texas (Commission) to provide notice to the Commission and Market Participants of ERCOT’s intention to utilize the Default Uplift Invoice process, as set forth in the ERCOT Protocols. This filing is an update to ERCOT’s previous April 14, 2021 submission¹ before the 87th Texas Legislature passed legislation addressing the substantial payments due but unpaid in the ERCOT market after the February 2021 Winter Weather Event associated with the statutorily-defined Period of Emergency.² Since the passage of the legislation, the Commission, ERCOT, and stakeholders have worked on implementing this legislation, which included securitization of \$800M from the Texas Comptroller. Taking into account this work, other recovery efforts, and amounts that remain subject to pending federal bankruptcy proceedings, the amount that will be subject to the Default Uplift Invoice Process has been substantially reduced from approximately \$2.9 billion (the amount provided in ERCOT’s April 14, 2021 filing) to approximately \$1.2 million. ERCOT provided a

¹ PUC Project No. 51812, *Issues Related to the State of Disaster for the February 2021 Winter Weather Event*, ERCOT’s Notice of Planned Implementation of Default Uplift Process (Apr. 14, 2021, AIS No. 197).

² Act of May 30, 2021, 87th Leg., R.S., ch. 908 (HB 4492), §§ 2-5 (codified at PURA §§ 39.601-.609 (subchapter M) and PURA §§ 39.651-.664 (subchapter N)); Act of May 28, 2021, 87th Leg., R. S., ch. 950 (SB 1580), §§ 1-3 (codified at PURA §§ 41.151-.163).

Market Notice to all Market Participants of the anticipated Default Uplift Invoice Process on Friday, May 20, 2022.³

I. Summary

The following is a high-level summary of ERCOT's planned implementation of the Default Uplift Invoice process, as described in more detail later in this filing. Please note this process is distinct from the processes by which ERCOT, as the Servicer of the bonds that have been or will be issued under Subchapters M and N of Chapter 39 of the Public Utility Regulatory Act, invoices Default Charges or will invoice Uplift Charges to applicable wholesale Market Participants.

- Currently, outstanding short payments (i.e., payments due to ERCOT but unpaid) total \$2,303,049,656.89. Of that amount, \$1,886,595,737.08 is associated with debts incurred during the Period of Emergency that are owed by Brazos Electric Power Cooperative, Inc., which is in a pending federal bankruptcy proceeding.
- Unless otherwise advised by the Commission, ERCOT intends to issue Default Uplift Invoices to collect the outstanding short payments that are associated with defaulting Competitive Entities for settlement periods outside the Period of Emergency, as these short payments were not addressed in the securitization legislation (Subchapter M). Those outstanding short payments total \$1,235,113.21. This amount is expected to be recovered within a single month, in a single invoice.
- Default Uplift Invoices will be issued to all Entities that were active in the ERCOT market in the month before the month in which the short-payments being recovered occurred, adjusted for statutory exemptions, so long as the Entity is either still active in the ERCOT market or voluntarily terminated its ERCOT registration after the short-payments being recovered occurred.
- Each Entity's total share of responsibility for the outstanding short-payment amounts—i.e., each Entity's Default Uplift Ratio Share—will be based on the Entity's share of activity in the ERCOT market in the month before the month in which the short pays occurred.
- Collections from Default Uplift Invoices will be used to pay short-paid Invoice Recipients, starting first with payments due on the oldest short-paid Invoices. Because these payments will address more than 60 Invoice cycles, it is impossible for ERCOT to make all of these

³ This ERCOT Market Notice is available at the following link:
https://www.ercot.com/services/comm/mkt_notices/detail?id=2f3ef965-6ebb-4dd6-b4a4-367704427835.

payments within one Bank Business Day of its receipt of the Default Uplift Invoice payments, as required in Paragraph (1) of ERCOT Nodal Protocols Section 9.19.2.2. To the extent necessary, ERCOT requests the Commission grant ERCOT a good cause exception to that requirement in recognition of the impossibility of complying with the ERCOT Protocols.

II. Background

As previously noted in its April 14, 2021 filing, ERCOT acts as the central Counter-Party for transactions in the ERCOT market between buyers and sellers, and ERCOT must maintain revenue neutrality in serving this function. Because ERCOT acts only as the clearinghouse through which funds are exchanged between buyers and sellers in the ERCOT market, when a Market Participant with a payment obligation fails to pay an Invoice in full (often referred to as a “short pay”), the result is that Market Participants that are due payments from those short-paid Invoices cannot be paid in full. Per ERCOT Protocol Section 9.19.1(1), the “Default Uplift Invoice” process must be used by ERCOT to collect outstanding “short pay amounts for all Settlement Invoices in a month,” to fully pay Market Participants that are due payments but have been short paid.⁴

Because the purpose of a Default Uplift Invoice is to collect short-pay amounts, the term “default,” when used in ERCOT Protocol Section 9.19.1, has a slightly different meaning than the term “event of Default” used in the ERCOT Standard Form Market Participant Agreement.⁵ In the specific context of Protocol Section 9.19.1, the undefined term “default” is a reference to the

⁴ The Default Uplift Invoice process is used only if short pays remaining outstanding after ERCOT has taken other steps, set out in Protocol Section 9.19, to collect on the short-pay amounts. These other steps include drawing on any existing Financial Security held by ERCOT for the short-paying Entity.

⁵ Per Protocol Section 1.7, capitalized terms in the ERCOT Protocols have the meanings given to them in Section 2, or other Section, of the ERCOT Protocols. Terms that are not capitalized, such as the term “default” in Protocol Section 9.19.1, must be given meaning by considering the context in which the term is used.

occurrence of a short pay (i.e., a failure by a Market Participant to pay an Invoice in full on its due date) that must be recovered using the Default Uplift Invoice Process.⁶

Results of the February 2021 Winter Weather Event included significant short pays by Market Participants with payment obligations. Several Market Participants that failed to satisfy their payment obligations had their registrations involuntarily terminated by ERCOT and no longer participate in the ERCOT market. However, some Market Participants that failed to make all required payments remained in the ERCOT market, either because they entered into payment plans to satisfy their payment obligations or because they are Non-Opt-In Entities (NOIEs)—i.e., Brazos Electric Cooperative and Rayburn Country Electric Cooperative (Rayburn). Since ERCOT’s April 14, 2021 filing, all Market Participants that entered into payment plans and Rayburn have satisfied their payment obligations. However, the following short-pay amounts remain outstanding:

Counter-Party	Non-Period of Emergency	Period of Emergency	\$ Total
EAGLES VIEW PARTNERS LTD (CP)	-	1,152,020.82	1,152,020.82
ENERGY MONGER LLC (CP)	-	8,336,810.22	8,336,810.22
ENTRUST ENERGY INC (CP)	1,159,633.83	294,663,063.11	295,822,696.94
GBPOWER LLC (CP)	-	19,759,584.00	19,759,584.00
GRIDDY ENERGY LLC (CP)	75,463.73	29,810,287.74	29,885,751.47
GRIDPLUS TEXAS INC (CP)	-	944,902.70	944,902.70
ILUMINAR ENERGY LLC (CP)	-	41,609,188.67	41,609,188.67
MQE LLC (CP)	-	13,137,883.75	13,137,883.75
POWER OF TEXAS HOLDINGS INC VIRTUAL (CP)	15.65	-	15.65
VOLT ELECTRICITY PROVIDER LP (CP)	-	5,805,065.59	5,805,065.59
Subtotal Competitive Entities	1,235,113.21	415,218,806.60	416,453,919.81
BRAZOS ELECTRIC POWER CO OP INC (CP)	-	1,886,595,737.08	1,886,595,737.08
Total	1,235,113.21	2,301,814,543.68	2,303,049,656.89

⁶ A “default” within the meaning of Protocol Section 9.19.1—simply meaning the occurrence of a short pay—can result in a Market Participant being in “Default” within the meaning of the Standard Form Agreement (SFA). However, a single instance of a short-pay (i.e., a “default” within the meaning of Protocol Section 9.19.1) does not become a “Default” under the SFA unless the short-paying Entity is given notice of breach under the SFA (a short-pay is a breach) and fails to timely cure the breach. Accordingly, an event of “Default” under the SFA may be a different occurrence than a “default” (a short pay) within the meaning of Protocol Section 9.19.1.

The consequence of these outstanding short-pay amounts is that Market Participants due payments from the above amounts have not been fully paid by ERCOT, and these Entities will not be fully paid until the above short-pay amounts are collected in full. The outstanding short pays of the Competitive Entities during the Period of Emergency were addressed through the securitization financing under PURA Chapter 39, Subchapter M. Additionally, the outstanding short pay of Brazos is being addressed in Brazos's pending federal bankruptcy proceeding. ERCOT, however, expects that the Default Uplift Invoice process will be the only avenue available to collect the short-paid amounts of the defaulting Competitive Entities associated with Invoices outside the Period of Emergency.⁷ Accordingly, ERCOT details herein its current expectations with respect to its planned use of the Default Uplift Invoice process to collect these amounts.

III. Applicable Protocol Language

The Default Uplift Invoice process is controlled by ERCOT Protocol Section 9.19.1, which provides in part as follows:

9.19.1 Default Uplift Invoices⁸

- (1) ERCOT shall collect the total short-pay amount for all Settlement Invoices for a month, less the total payments expected from a payment plan, from Qualified Scheduling Entities (QSEs) and CRR Account Holders. ERCOT must pay the funds it collects from payments on Default Uplift Invoices to the Entities previously short-paid. ERCOT shall notify those Entities of the details of the payment.
- (2) Each Counter-Party's share of the uplift is calculated using the best available Settlement data for each Operating Day in the month prior to the month in which the default occurred.

⁷ Amounts that will have to be collected through the Default Uplift Invoice process can also change for reasons such as future Resettlements of the Operating Days included in the short-paid Settlement Invoices, or through the receipt of additional payments on the short-paid Invoices through other means, such as via collection actions ERCOT may file against the owing Market Participants.

⁸ As explained herein, Default Uplift Invoices are calculated on a Counter-Party basis. In ERCOT, a Counter-Party is defined as "A single Entity that is a QSE and/or a CRR Account Holder. A Counter-Party includes all registrations as a QSE, all subordinate QSEs, and all CRR Account Holders by the same Entity."

- (3) The uplifted short-paid amount will be allocated to the Market Participants (QSEs or CRR Account Holders) assigned to a registered Counter-Party based on the pro-rata share of MWhs that the QSE or CRR Account Holder contributed to its Counter-Party's maximum MWh activity ratio share.
- (4) Any uplifted short-paid amount greater than \$2,500,000 must be scheduled so that no amount greater than \$2,500,000 is charged on each set of Default Uplift Invoices until ERCOT uplifts the total short-paid amount. ERCOT must issue Default Uplift Invoices at least 30 days apart from each other.
- (5) ERCOT shall issue Default Uplift Invoices no earlier than 90 days following a short-pay of a Settlement Invoice on the date specified in the Settlement Calendar. The Invoice Recipient is responsible for accessing the Invoice on the MIS Certified Area once posted by ERCOT.

IV. ERCOT's Planned Implementation of Default Uplift Invoice Process

Following is a summary of ERCOT's planned implementation of the Default Uplift Invoice process with respect to collection of outstanding short payments.

A. Short-Payments Expected to be Included in Default Uplift Invoice Amounts

ERCOT expects that only those short-payment amounts due from certain defaulting Competitive Entities for Invoice periods outside the Period of Emergency will be collected using the Default Uplift Invoice process at this time.

B. Amount Limitations and Timing Concerning Default Uplift Invoices

Protocol Section 9.19.1(4) limits ERCOT to billing a total of \$2.5 million dollars every 30 days using the Default Uplift Invoice process. ERCOT understands this to be the total maximum amount that can be invoiced across all Counter-Parties within a 30-day period. In light of the approximately \$1.2 million amount that ERCOT intends to collect through the Default Uplift Invoice process at this time, ERCOT anticipates the full amount will be invoiced and collected within one month, under one invoice cycle. ERCOT anticipates invoicing Market Participants by no later than end of the month (May 2022).

ERCOT will use funds collected from Default Uplift Invoices to pay, on a *pro rata* basis, Invoice Recipients due payments on existing short-paid Invoices from outside the Period of Emergency, starting first with the oldest short-paid Invoices. Processing of these payments may take up to four weeks because ERCOT will be issuing payments associated with more than 60 Invoice cycles.

The initiation of the Default Uplift Invoice process is timed to permit ERCOT to complete both the Default Uplift invoicing and the allocation to Qualified Scheduling Entities (QSEs) of their share of the Default Uplift amount before ERCOT begins its disbursement of the proceeds from the bond issuance under Subchapter N of Chapter 39 of PURA. That bond issuance is currently expected to occur in mid-June 2022.

C. Allocation of Default Uplift Invoice Amounts

ERCOT Protocol Sections 9.19.1(2) and (3) provide that a Counter-Party will be allocated a share of the short-pay amounts for Settlement Invoices for a month based on “the best available Settlement data for each Operating Day in the month prior to the month in which the default occurred.” As noted above, the month in which the “default” occurred, in the context of Protocol Section 9.19.1(2), is the month in which the short-payment being collected by the Default Uplift Invoice occurred. A Counter-Party’s entire share of the Default Uplift Invoice amount (i.e., its Default Uplift Ratio Share) is calculated based on the *pro rata* share of MWhs that the QSE(s) or CRR Account Holder(s) assigned to that Counter-Party contributed to the Counter-Party’s maximum MWh activity ratio share in the month before the month in which the short-pays being collected occurred. With respect to short-pays from February 2021, this means that each non-statutorily-exempted Counter-Party of QSEs or CRR Account Holders (CRRAHs) that had activity in January 2021 may be allocated a share of the short-pays for Settlement Invoices with payment

due dates in February 2021. Similarly, each Counter-Party of QSEs or CRRAHs that had activity in February 2021 may be allocated a share of the short-pays for Settlement Invoices with payment due dates in March 2021.

D. Request for Good Cause Exception

Paragraph (1) of ERCOT Protocols Section 9.19.2.2 requires ERCOT to pay short-paid Invoice Recipients by 1700 on the next Bank Business Day after payments are due for that Default Uplift Invoice, subject to availability of funds. However, this provision does not contemplate the current circumstances in which ERCOT will be required to issue payments associated with more than 60 Invoice cycles. ERCOT's settlement systems are unable to process all of these Invoice cycles within a single Bank Business Day. Therefore, in recognition of the impossibility of complying with this Protocol provision, to the extent necessary, ERCOT requests that the Commission grant it a good cause exception to this requirement.

V. Conclusion

ERCOT appreciates the Commission's consideration of ERCOT's planned implementation of the Default Uplift Invoice process, as set forth herein. ERCOT stands ready to modify its planned implementation based on any input or guidance it may receive from the Commission.

Respectfully Submitted,

/s/ Davida Dwyer

Chad V. Seely
Vice President and General Counsel
Texas Bar No. 24037466
(512) 225-7035 (Phone)
(512) 225-7079 (Fax)
chad.seely@ercot.com

Davida Dwyer
Sr. Corporate Counsel
Texas Bar No. 24052120
512-225-7023 (Phone)
512-225-7079 (Fax)
davida.dwyer@ercot.com

ERCOT
8000 Metropolis Drive (Building E), Suite 100
Austin, Texas 78744

ATTORNEYS FOR ELECTRIC RELIABILITY
COUNCIL OF TEXAS, INC.