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**ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.’S NOTICE OF
PLANNED IMPLEMENTATION OF DEFAULT UPLIFT INVOICE PROCESS**

The 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 clarity to the Commission and ERCOT Market Participants regarding ERCOT’s understanding of the ERCOT Protocols that control the Default Uplift Invoice process.

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:

- Currently, outstanding short payments (i.e., payments due but unpaid) in the ERCOT market total approximately \$2.9 billion.
- Although ERCOT has the authority to start issuing Default Uplift Invoices to collect outstanding short-pay amounts as early as May 24, 2021, ERCOT does not intend to begin issuing Default Uplift Invoices until after the conclusion of the current session of the Texas Legislature.
- Unless otherwise advised by the Commission, ERCOT intends to issue Default Uplift Invoices that collectively total no more than \$2.5 million each month. At that rate, it will take over 96 years to collect the current amount of outstanding short payments using only the Default Uplift Invoice process.
- 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. ERCOT will also use collections from the Default Uplift Invoices to help replenish the portion of the CRR auction fund used to cover short payments in February 2021.
- Default Uplift Invoices will be issued to all Entities active in the ERCOT market in the month before the month in which the short-payments being recovered occurred, 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. This means

Entities such as Brazos Electric Cooperative and Rayburn Country Electric Cooperative will receive Default Uplift Invoices.

- 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-payments being recovered occurred.
- An Entity that voluntarily terminates its ERCOT registration remains responsible for its entire Default Uplift Ratio Share following its termination. Upon a voluntary termination, ERCOT will require the terminating Entity to provide Financial Security in the amount of their unrecovered Default Uplift Ratio Share.

II. Background

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 an ERCOT Market Participant with a payment obligation short pays an Invoice, the result is that ERCOT 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,” in order to fully pay the ERCOT Market Participants that are due payments but have been short paid.¹

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.²

¹ 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.

² 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.

In the specific context of Protocol Section 9.19.1, the undefined term “default” is a reference to the 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.³

As a result of the February 2021 Winter Weather Event, there have been significant “short payments” by ERCOT Market Participants with payment obligations. A number of ERCOT Market Participants that failed to satisfy their payment obligations have had their ERCOT Market Participant registration involuntarily terminated by ERCOT and no longer participate in the ERCOT market. However, some ERCOT Market Participants that have failed to make all required payments still remain in the ERCOT market, either because they are entering 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.

As of the date of this filing, the total outstanding short-pay amounts for all Settlement Invoices for the months of February, March, and April 2021 are as follows:

Month	Outstanding Settlement Invoice Short-Pay Amounts as of April 14, 2021⁴
February 2021	\$ 2,217,349,958.16
March 2021	\$ 679,143,151.89
April 2021	\$745,904.70

The consequence of these short-pays is that the ERCOT Market Participants due payments from the above amounts have not been fully paid by ERCOT, and these Entities will not be fully paid

³ 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.

⁴ Additional short payments of Invoices may continue, due to the impact of resettlements and Final and True-up Settlements.

until the above short-pay amounts are collected in full. A small portion of the short-pay amounts listed above is expected to be collected directly from the owing ERCOT Market Participants through payment plans. Further, actions by the Texas Legislature may allow for Entities with outstanding short payments to obtain financing to satisfy their outstanding payment obligations. ERCOT, however, expects that the Default Uplift Invoice process will be the only avenue available to collect a significant portion of the short-pay amounts listed above.⁵ 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 Invoices⁶

- (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.
- (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.

⁵ 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.

⁶ 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."

- (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.

Although Protocol Section 9.19.1 provides significant detail regarding the Default Uplift Invoice process, ERCOT has never before implemented the above language in the circumstances currently presented, in which the total amount of expected uplift vastly exceeds the monthly \$2,500,000 limitation in Protocol Section 9.19.1(4), and in which Market Participants whose short-payments are part of the expected uplift amount continue to participate in the ERCOT market.

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. This planned implementation is subject to further guidance that may be provided by the Commission. Further, there may be a need to modify this planned implementation if the Texas Legislature takes actions that impact the ERCOT market. In addition, ongoing litigation and bankruptcy proceedings by current ERCOT Market Participants may require ERCOT to modify its planned implementation. Finally, this planned implementation may be modified if there are other changed circumstances or new information is obtained by ERCOT.

A. Timing of Issuance of Default Uplift Invoices

Per Protocol Section 9.19.1(5), ERCOT may begin issuing Default Uplift Invoices 90 calendar days after date of the short-payment that is being collected. With respect to the February 2021 short payments, the first date ERCOT may issue Default Uplift Invoices is May 24, 2021

(i.e., 90 days after February 22, 2021, the date of the oldest short-payment). ERCOT intends, however, to defer issuance of any Default Uplift Invoices until completion of the current session of the Texas Legislature, in light of certain actions under consideration by the Texas Legislature at this time. Currently, ERCOT expects that the first set of Default Uplift Invoices related to February 2021 will be issued sometime during the summer of 2021.

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

Per Protocol Section 9.19.1(1), the Default Uplift Invoice process is to be used to collect any outstanding short payments, except for those ERCOT expects to collect through a payment plan. Accordingly, at this time ERCOT expects that only those short-payment amounts due from Market Participants that have entered into payment plans with ERCOT will be excluded from the amounts to be collected using the Default Uplift Invoice process. At this time, it is expected that the significant short-pay amounts owed by NOIEs that have not entered into payment plans with ERCOT will be included in the amounts collected through the Default Uplift Invoice process.

C. Time and Amount Limitations 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 significant amounts that will likely need to be collected through the Default Uplift Invoice process to recover for the February/March 2021 short payments, Default Uplift Invoices will have to be issued for over 96 years, at the rate of \$2.5 million every month, to fully collect on all currently-outstanding short-pays. Although the Commission issued an Order in this docket granting ERCOT discretion to exceed the \$2.5 million per 30 day limit, at this time ERCOT does

not intend to issue Default Uplift Invoices at a rate exceeding the \$2.5 million limit set out in the Protocols, unless it receive express direction from the Commission to do so.

ERCOT intends to issue Default Uplift Invoices to fully collect on the short-pay amounts for Settlement Invoices from February 2021 before issuing any Default Uplift Invoices to collect on the short-pay amounts for Settlement Invoices from March 2021. As noted above, because the vast majority of short pays occurred in February 2021, it could be more than 70 years before Market Participants are issued Default Uplift Invoices for the March 2021 short pays.

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, starting first with the oldest short-paid Invoices. To the extent ERCOT utilized approximately \$800 million from the Congestion Revenue Right (CRR) auction fund to cover part of the payments that were due to Invoice Recipients on February 26, 2021, ERCOT currently intends to use part of the collections from Default Uplift Invoices to replenish the CRR auction fund with sufficient funds to come into compliance with ERCOT's Financial Corporate Standard, which currently requires ERCOT to have on hand six months of forecasted redistribution of CRR Auction receipts.⁷

D. Allocation of Default Uplift Invoice Amounts

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

⁷ ERCOT also intends to use funds collected via other methods—such as through payment plans—to help replenish these CRR Auction funds.

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-payments from February 2021, this means that each 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 with activity in February 2021 may be allocated a share of the short-pays for Settlement Invoices with payment due dates in March 2021.

The formula in Protocol Section 9.19.1(2) sets forth the calculation ERCOT must use to determine each Counter-Party’s Default Uplift Ratio Share of the total short-pay amount that must be collected through the Default Uplift Invoice process. The formula provides that a Default Uplift Ratio Share must be calculated for any Counter-Party representing a Market Participant that meets the definition of the variable “mp.” The variable “mp” is defined in Protocol Section 9.19.1(2) as a “Market Participant that is a non-defaulting QSE or CRR Account Holder.” To give effect to the all language in Protocol Section 9.19.1 and allow for proper allocation of Default Uplift Invoice amounts, ERCOT considers the phrase “non-defaulting QSE or CRR Account Holder” to mean any Entity that is either: (1) a currently registered QSE or CRRAH; or (2) a QSE or CRR Account Holder that voluntarily terminated its QSE or CRRAH registration subsequent to the date of the short-pays being collected through the Default Uplift Invoice process. Per the plain language of Protocol Section 9.19.9(2), a Counter-Party that meets the foregoing criteria will be allocated a Default Uplift Ratio Share if it was

active in ERCOT in the month prior to the month covered by the short-paid Settlement Invoices being collected through the Default Uplift Invoices at issue.⁸

In light of the above, Market Participants with no activity in the month prior to the month covered by the short-paid Settlement Invoices being collected (e.g., new market entrants) will not receive Default Uplift Invoices for that short-paid month. Further, active Market Participants that have short-paid ERCOT—such as the NOIEs referenced above and short-paying Entities on payment plans—will be allocated a Default Uplift Ratio Share and issued Default Uplift Invoices. Finally, QSEs or CRRAs with ERCOT activity in the month prior to the month covered by the short-paid Settlement Invoices being collected, but who subsequently choose to voluntarily terminate their QSE or CRRAs registration, will be allocated a Default Uplift Ratio Share and have a corresponding obligation to pay any Default Uplift Invoices issued to recover their entire Default Uplift Ratio Share.

E. Default Uplift Payment Obligations Survive Voluntary Termination

Related to the above, the ERCOT Protocols and ERCOT Standard Form Market Participant Agreement (SFA) require that a QSE or CRRAs that has ERCOT activity in the month prior to a month with short-paid Settlement Invoices, but that voluntarily terminates its QSE or CRRAs registration(s) subsequent to the date of the short-pays, will have an ongoing obligation to pay its calculated Default Uplift Ratio Share in full. This obligation survives termination of the QSE or CRRAs registration.

This consequence is expressly contemplated by Protocol Section 16.11.7(1), which grants ERCOT authority to retain Financial Security to cover a departing Market Participant's "future

⁸ As the Commission is aware, litigation is ongoing that seeks to permanently enjoin ERCOT from issuing Default Uplift Invoices to certain entities. At this time, it is ERCOT's position that those entities should not be excluded from the calculation of Default Uplift Ratio Shares as described herein, even if ERCOT is currently prevented from issuing Default Uplift Invoices to such entities.

obligation” for, among other things, Default Uplift Invoices. Further, Section 3(C) of the SFA provides that any “obligations...that have accrued under this Agreement prior to the date of termination shall survive.” Here, an ERCOT Market Participant’s obligation for its Default Uplift Ratio Share accrues when ERCOT determines that it must use the Default Uplift Invoice process to collect unpaid short pay amounts for a Settlement Invoice. Per Protocol Section 9.19(1)(e), this determination occurs when, after taking all other actions available in Protocol Section 9.19 (such as drawing on Financial Security), funds continue to be unavailable to fully pay short-paid Settlement Invoices. Per Protocol Section 9.19(2), once it is determined that the Default Uplift Invoice process must be used, a Market Participant becomes responsible—i.e., its obligation “accrues” for purposes of survival of the obligation under the SFA—for the Counter-Party’s entire Default Uplift Ratio Share. This Default Uplift Ratio Share is calculated based on the activity of the QSEs or CRRAs represented by the Counter-Party in the month prior to the month in which the short-pay occurred. A Market Participant is not excused from this obligation if its QSE or CRRAs registration(s) are voluntarily terminated thereafter. This is true regardless of the fact that timelines set forth in the Protocols may not permit ERCOT to schedule Default Uplift Invoices to collect payments for the Market Participant’s Default Uplift Ratio Share until after the termination of the QSE or CRRAs registration(s).⁹

The voluntary termination of a QSE or CRRAs with an accrued obligation to pay a Default Uplift Ratio Share creates a significant risk that the terminated Entity will not fully satisfy the payment obligation for the entire Default Uplift Ratio Share. ERCOT Protocol Section 16.11.7(2) attempts to mitigate this risk by allowing ERCOT to retain Financial Security from

⁹ For example, because of required timelines in the ERCOT Protocols governing Settlement Invoices, it is standard for ERCOT to issue Final and True-up Settlement Invoices for a terminated Market Participant that cover Operating Days in which the Market Participant was still active in ERCOT. Market Participants remain obligated to pay any such Invoices, even subsequent to the termination of their SFA.

the terminating Market Participant up to its maximum Total Potential Exposure (TPE). The standard formula for TPE in Protocol Section 16.11.4.1(2) only contemplates including only one year's worth of expected Default Uplift Invoices in the TPE calculation. Because of the significant short-pay amounts at issue, however, ERCOT expects to continue to issue Default Uplift Invoices well beyond this one-year time frame. Accordingly, the standard TPE calculation does not appear to appropriately capture the risk associated with the voluntary termination of a QSE or CRRRAH with an accrued obligation for a Default Uplift Ratio Share.

Protocol Section 16.11.4.1(3), however, grants ERCOT discretion to deviate from the standard TPE calculation if ERCOT determines that it “does not adequately match the financial risk created by that Counter-Party’s activities.” In this case, ERCOT believes that applying the standard TPE calculation to voluntarily terminating Market Participants with accrued Default Uplift Ratio Share obligations does not adequately match the risk created by the Market Participant’s voluntary departure from the ERCOT market. Accordingly, ERCOT intends to set a different TPE for departing Market Participants with accrued Default Uplift Ratio Share obligations—this may require setting TPE up to a maximum of the entire amount of the Counter-Party’s Default Updated Ratio Share, as calculated under Protocol Section 9.19.1(2). Per Protocol Section 16.11.7(2), ERCOT has the authority to request Financial Security up to the maximum of the determined TPE for a terminating Market Participant, and may then draw against that Financial Security to satisfy payment obligations on any subsequently-issued Default Uplift Invoices.

F. Short Payment of Default Uplift Invoices Results in a New Default Uplift Invoice Process

ERCOT Protocol Section 9.19.2.2(3) expressly contemplates that, if a Default Uplift Invoice is itself short paid, then that short payment amount will also be subject to collection by

ERCOT using the Default Uplift Invoice process. This means that any Counter-Party active in ERCOT in the month prior to the date on which a payment for Default Uplift Invoice was due but not paid will be allocated a pro rata share of that short-pay amount, if it must be collected by ERCOT using the Default Uplift Invoice process.

V. Conclusion

ERCOT appreciates the Commission's consideration of ERCOT's planned implementation of the Default Uplift Invoice process, as set forth herein. ERCOT expects to provide additional updates to the Commission regarding its implementation of the Default Uplift Invoice process prior to ERCOT's issuance of the first set of Default Uplift Invoices related to the February 2021 event. ERCOT stands ready to modify its planned implementation based on any input or guidance it may receive from the Commission.

Respectfully Submitted,

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