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APPLICATION OF THE ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. FOR A DEBT OBLIGATION ORDER UNDER PURA CHAPTER 39, SUBCHAPTER M, AND REQUEST FOR A GOOD CAUSE EXCEPTION	§ § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

ENEL TRADING NORTH AMERICA, INC.'S STATEMENT OF POSITION

Enel Trading North America, Inc. ("Enel") files this Statement of Position addressing the Electric Reliability Council of Texas, Inc.'s ("ERCOT") application for a Debt Obligation Order. On July 27, 2021, Enel filed a Motion to Intervene in this proceeding and, as memorialized in Order No. 2 issued on July 29, 2021, the Public Utility Commission of Texas ("Commission") Administrative Law Judge ("ALJ") granted Enel's motion admitting it as an intervenor in this proceeding.[1] Order No. 2 also memorialized the parties' agreed procedural schedule, including the establishment of August 12 as the deadline for intervenors to file a statement of position or direct testimony. Therefore, this pleading is timely filed.

I. BACKGROUND

As noted in its motion to intervene, Enel is a Qualified Scheduling Entity ("QSE") and Congestion Revenue Rights Account Holder ("CRRAH"). Enel provides QSE services for several of its affiliated power generation companies ("PGC") that are resource entities in the ERCOT wholesale market. As such, Enel and its affiliates will be assessed default charges under the proposal in ERCOT's application in order to repay a share of the default balance.

II. ENEL'S STATEMENT OF POSITION

Enel takes the following positions on ERCOT's application, but reserves the right to amend or supplement its position after review of the evidence and positions of other parties regarding the proposed Debt Obligation Order. Enel's silence on any issue should not be interpreted as an indication of its agreement with that issue. Enel also reserves the right to take further action in

[1] Order No. 2: Finding Application Sufficient and Notice Reasonable, Memorializing Prehearing Conference, and Adopting Amended Procedural Schedule at 1-2 (July 29, 2021).

this proceeding, including participating in cross-examination of witnesses at the hearing on the merits and through post-hearing briefing.

A. Financed Amount

Public Utility Regulatory Act[2] ("PURA") § 39.601(a)(1) states that the purpose of Chapter 39, Subchapter M of PURA is to enable financing of the "default balance." PURA § 39.602(1) defines default balance to mean "an amount of money of not more than $800 million" that only includes: (1) amounts owed to ERCOT by competitive wholesale market participants that have been or otherwise would be uplifted; (2) financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants (i.e. CRR funds); and (3) reasonable costs incurred by a state agency or ERCOT to implement a debt obligation order under this subchapter. These are limited to amounts owed during the "period of emergency" arising from Winter Storm Uri, defined as beginning on February 12, 2021 and ending on February 20, 2021.[3] ERCOT's application proposes to finance the full $800 million allowed by the statute.[4] However, ERCOT states that the total default balance is approximately $1.13 billion, with $766 million still owed to replenish the CRR auction receipts along with at least $318 million in over-due payments to market participants.[5] Enel supports financing of the default balance under PURA § 39.603 because it would allow ERCOT to pay a significant portion of the outstanding short-paid amounts owed to wholesale Market Participants in a more timely manner. Therefore, maximizing the amount available to make market participants whole for the defaults of others is crucial.

Pursuant to PURA § 39.603(a), the Commission may authorize the establishment of a debt financing mechanism to finance the default balance if the Commission finds "that the debt obligations are needed to preserve the integrity of the wholesale market and the public interest[.]" In making this determination, the Commission must consider: (1) the need to timely replenish the CRR funds previously used by ERCOT to reduce amounts short-paid to wholesale market participants; (2) the interests of those wholesale market participants that are owed balances; and

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[2] Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 ("PURA").

[3] *See* PURA § 39.602(4) (defining "period of emergency").

[4] Application of Electric Reliability Council of Texas, Inc. for a Debt Obligation Order to Finance Default Balances Under PURA Chapter 39, Subchapter M and Request for Good Cause Exception at bates 005 (July 16, 2021) ("ERCOT Application").

[5] *Id.* at bates 007.

(3) the potential effects of uplifting such balances without a financing vehicle.[6] Enel recommends that the Commission find that the debt obligations are needed to preserve the integrity of the wholesale market and are in the public interest. As the Commission is aware, the ERCOT wholesale market was not prepared for defaults on the scale that occurred during the period of emergency and at least $318 million remains unpaid to market participants.[7] If the debt obligation mechanism were not approved, the entire default balance would have to be addressed through the existing ERCOT uplift mechanism established in ERCOT Nodal Protocol § 9.19,[8] which entails the charging of Default Uplift Invoices to market participants on no more than a monthly basis and caps monthly default invoices to $2.5 million.[9] At this rate, repayment of the $318 million in short-payments and $766 million to replenish the CRR funds would take more than 36 years. This is six years longer than the maximum 30-year repayment timeframe permitted for the debt obligations under PURA § 39.603(b)(2), but even more detrimental is the fact that market participants would remain short-paid throughout this lengthy process. If short-paid market participants are to maintain their faith in the ERCOT market and have the funds they need to continue to invest in increased generation capacity and other infrastructure to provide for additional reliability support services, then prompt repayment of these amounts owed is critical to preserving market integrity.

B. Distribution and Use of Proceeds

ERCOT states that Subchapter M of PURA Chapter 39 does not establish an explicit priority between the three permitted uses for the proceeds of the default obligation order.[10] ERCOT proposes to first apply $50 million of the proceeds to the costs incurred to implement the debt obligation order and retire or refund existing debt, then apply $318 million to pay amounts

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[6] *See* PURA §§ 39.603(a)(1)-(3).

[7] ERCOT's Application at bates 007.

[8] *See Issues Related to the State of Disaster for the February 2021 Winter Weather Event*, Project No. 51812, Electric Reliability Council of Texas, Inc.'s Notice of Planned Implementation of Default Uplift Invoice Process (Apr. 14, 2021) (in which ERCOT announced its intention to implement the default uplift process to address short payments, absent the implementation of alternative processes by the Texas Legislature).

[9] *See* ERCOT Nodal Protocol § 9.19.1(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.").

[10] ERCOT's Application at bates 008.

short-paid to market participants, and finally apply all remaining amounts to replenish the CRR auction proceeds.[11] Enel agrees that the priority should be to repay market participants with an outstanding balance owed. In the purpose statement of PURA § 39.601(b), the Legislature listed the benefits of financing the default balance in the manner laid out in Subchapter M and the benefit listed first is to "allow wholesale market participants that are owed money to be paid in a more timely manner." Replenishing financial revenue auction receipts and allowing repayments of the default balance over time are listed as secondary and tertiary benefits.[12] Should amounts owed to market participants be found to exceed the $318 million that ERCOT claims, such additional amounts should be prioritized for repayment over further replenishment of the CRR auction proceeds. This not only is consistent with legislative intent, but also will help to provide much-needed financial resources to short-paid generators in order to continue to invest in making the ERCOT market more reliable.

C. Structure of Default Charges

PURA § 39.603(d) requires that default charges be collected from and allocated among wholesale market participants "using the same allocated pro rata share methodology under which the charges would otherwise be uplifted under the [ERCOT] protocols in effect on March 1, 2021." ERCOT Nodal Protocol § 9.19.1(2) provides the referenced formula and establishes the pro rata share based on the Counter-Party's ("CP", i.e. master QSE or CRRAH) Maximum MWh Activity Ratio Share ("MMARS $_{cp}$"), which is the maximum MWh activity of all market participants represented by the CP in the day-ahead market, real-time market, and CRR auction for the given month. ERCOT proposes to collect payments of default charges from QSEs and CRRAHs, rather than the Resource Entities, Load Serving Entities, and other market participants that the CPs represent in wholesale transactions in the ERCOT market, because ERCOT asserts that it has no means to settle with any other market participant types.[13] Enel agrees that this is a reasonable approach because QSEs and CRRAHs are financially responsible to ERCOT for transactions in the ERCOT market. Because no Protocol or Commission rule requires CPs to pass on any proceeds that they receive to the market participants that they service, the Commission may wish

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[11] *Id.*

[12] *See* PURA § 39.601(2) & (3).

[13] ERCOT's Application at bates 009.

to consider implementing a requirement that QSEs and CRRAHs must provide any proceeds received to the market participant in accordance with their allocation calculation under the Protocol formula, at least for non-affiliated QSEs and CRRAHs.

Under the default uplift process set forth in the ERCOT Nodal Protocols, the allocation of default charges is determined only once, based on the market activity from the month prior to the default. In contrast, in the present application, ERCOT proposes to determine the allocation on a rolling basis by using market activity from the most recent month for which final settlement data is available.[14] Enel does not take a position at this time on ERCOT's proposal to determine the allocation percentages on a rolling basis, but reserves its right to take a position on this issue at a later date.

III. CONCLUSION

For the reasons stated herein, Enel respectfully requests that the Commission authorize a debt obligation order for $800 million, find that the debt obligations are needed to preserve the integrity of the wholesale market and are in the public interest, and that collection of payments for default charges from QSEs and CRRAHs is appropriate. Enel further requests that the Commission grant Enel any other relief to which it may be entitled.

[14] *See id.*

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties to this proceeding on August 12, 2021 via filing to the Commission's Interchange in accordance with the service instructions of Order No. 2.

Matthew A. Arth