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

**GOLDEN SPREAD ELECTRIC COOPERATIVE, INC.’S STATEMENT OF POSITION**

Golden Spread Electric Cooperative, Inc. (“Golden Spread”) respectfully offers this timely filed Statement of Position regarding the default securitization proposal.<sup>1</sup> While Golden Spread appreciates the Electric Reliability Council of Texas’ (“ERCOT”) efforts and the time constraints under which we all must proceed, the prioritization of distributions of Default Uplift proceeds should not show preference for certain wholesale market participants over others. The Default Balance is approximately \$1.3 billion;<sup>2</sup> so, the \$800 million Default securitization cannot address the Default Balance in full. The Commission must prioritize how the securitization proceeds are used. Golden Spread urges the Public Utility Commission of Texas (“Commission”) to apply the \$800 million securitization proposed in this Docket first to replenish the prepaid Congestion Revenue Right (“CRR”) accounts from which ERCOT borrowed and to use any remaining securitized amounts to address remaining default amounts on a pro rata basis without preference for any one type of wholesale market participant over another.

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<sup>1</sup> 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 (“ERCOT Proposal”).

<sup>2</sup> ERCOT Proposal at 6.

**I. IT IS NOT COINCIDENCE THAT THE \$800 MILLION CAP IMPOSED BY HOUSE BILL 4492 MATCHES THE \$800 MILLION NEEDED TO REPLENISH THE PREPAID CRR ACCOUNTS.**

The \$800 million default securitization derives from a legislative desire to replenish \$800 million in CRR deposits that were diverted from ERCOT’s lockbox for CRR Auction receipts in order to mitigate the short-pay to generators in February. Previous ERCOT filings highlight the match in dollar amounts between the \$800 million default securitization cap and the amount needed to replenish the CRR accounts. In an April 14, 2021 filing to the Commission, ERCOT noted “[it] 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... ”<sup>3</sup> Weeks later, the Texas Legislature, in House Bill 4492,<sup>4</sup> passed legislation that allows ERCOT to securitize default amounts up to this exact same \$800 million threshold. This is not coincidence. In fact, prior to the April 14 ERCOT filing, the Legislature was considering a default securitization plan that did not include the \$800 million cap.<sup>5</sup> The Commission should seek to implement a default securitization plan that matches the Legislature’s intent as closely as possible, and the ERCOT Proposal does not do that.

**II. REPLENISHMENT OF THE CRR ACCOUNTS SHOULD RECEIVE THE HIGHEST PRIORITY.**

Prompt and complete replenishment of the prepaid CRR accounts should be prioritized over defaulted amounts associated with competitive retailers. “ERCOT reduced the amount of short payments applicable to the Period of Emergency to market participants by applying \$800 million in CRR auction revenue funds held by ERCOT to protect the overall integrity of the

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<sup>3</sup> Project No. 51812, Electric Reliability Council of Texas, Inc.’s Notice of Planned Implementation of Default Uplift Invoice Process (Apr. 14, 2021) at 7.

<sup>4</sup> Act of May 30, 2021, 87th Leg., R.S. (“HB 4492”).

<sup>5</sup> HB 4492 itself, when it was filed, did not include the \$800 million cap.

wholesale electric market.”<sup>6</sup> And, at least to a degree, the ERCOT Proposal intends to use default securitization proceeds to help return the prepaid CRR account moneys. As ERCOT notes that the default securitization is intended to “serve[] the public purpose of preserving the *integrity of the electricity market in the ERCOT power region*.”<sup>7</sup> The financial security and stability of the CRR system plainly promotes the integrity of the ERCOT market. ERCOT witness Sean Taylor explained the implications of the underfunded prepaid CRR accounts:

ERCOT is currently operating below its approved liquidity requirement levels. This means that if the financial revenue auction receipts are not replenished in a timely manner, ERCOT market participants could face another challenging liquidity scenario.<sup>8</sup>

By ERCOT’s own account, the integrity of the ERCOT market and ERCOT’s liquidity depend on the prompt replenishment of prepaid CRR accounts. This should be of the utmost priority as ERCOT’s liquidity affects every single market participant. The nexus between the fully funded CRR auction revenue accounts and the integrity of the ERCOT wholesale electric market seems undisputed. Wholesale market participants cannot operate if ERCOT cannot operate. Consistent with PURA § 39.601(c) and the call for preserving the integrity of the ERCOT market, ERCOT should use the proceeds of the default securitization to repay CRR Account holders the amounts that ERCOT borrowed from them.

The moneys drawn from the prepaid CRR accounts have to be repaid soon, regardless of the securitization. The securitization offers a timely and cost-effective way to replenish these funds. If the repayment does not come through securitization, it must come from other means that

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<sup>6</sup> Direct Testimony of Kenan Ogelman at p. 21, l. 18-21.

<sup>7</sup> ERCOT Proposal at 2 (citing PURA § 39.601(c)) (emphasis added).

<sup>8</sup> Direct Testimony of Sean Taylor at p. 17, l. 2-5. As ERCOT noted in its April 14 filing in Project No. 51812, ERCOT’s Financial Corporate Standard requires ERCOT to have on hand six months of forecasted redistribution of CRR Auction receipts.

may be less desirable and more expensive to market participants. This might include debt incurred by ERCOT and/or socialization of the cost to market participants in a manner consistent with ERCOT Protocols.

### **III. ERCOT SHOULD NOT DISCRIMINATE AMONG QSES AND LSES WITH ITS APPLICATION OF DEFAULT SECURITIZATION PROCEEDS.**

HB 4492 places all defaulting entities of all types on comparable footing as it relates to ongoing participation in the ERCOT market. PURA § 39.159 requires:

The commission shall require that *all market participants fully and promptly pay* to the independent organization certified under Section 39.151 for the ERCOT power region *all amounts owed to the independent organization*, or provide for the full and prompt payment of those amounts owed, which must be calculated solely according to the protocols of the independent organization in effect during the period of emergency and subject to the jurisdiction of the commission, to qualify, or to continue to qualify, as a market participant in the ERCOT power region.

The independent organization shall report to the commission that a market participant is in default for the failure to pay, or provide for the full and prompt payment of, all amounts owed to the independent organization as calculated in accordance with this section. *The commission may not allow the defaulting market participant to continue to be a market participant* in the ERCOT power region for any purpose or allow the independent organization to accept the defaulting market participant's loads or generation for scheduling in the ERCOT power region until all amounts owed to the independent organization by the market participant as calculated in this section are fully paid.<sup>9</sup>

Despite PURA § 39.159's clear language requiring that all market participants with amounts owed to ERCOT be treated comparably, the ERCOT Proposal suggests that the default amounts related to competitive retailers be treated differently from those of electric cooperatives. There is no legal justification for the inconsistent treatment of Default Balances caused by one market participant versus another. To the contrary, PURA expressly requires ERCOT to operate

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<sup>9</sup> PURA §39.159(a)-(b) (emphasis added).

in a non-discriminatory manner.<sup>10</sup> Applying a portion of the securitization proceeds to some market participants' defaults while skipping others creates the risk of market imbalances. For example, consistent with the mandate in PURA § 39.159, ERCOT might terminate a wholesale market participant for amounts owed from the Winter Storm after the approval of the ERCOT Proposal. In such a scenario, not only would there be inconsistency in the treatment of defaulting wholesale market participants generally, there would be inconsistency in the treatment of the terminated wholesale market participants as well. The ERCOT Proposal should not be designed in a manner that dissuades ERCOT's compliance with the plain letter of PURA § 39.159 and, as constructed, it might.

The \$318 million default amount addressed by the ERCOT Proposal constitutes only about 10.6% of the overall default balance.<sup>11</sup> Given that it is such a small percentage of short-pay amount, its role in repaying owed generators and in mitigating any uplift socialized pursuant to ERCOT Protocol 9.19<sup>12</sup> can only be modest. The vast preponderance of the short-pay balance is not addressed by the ERCOT Proposal nor are the many years required for its eventual repayment of 90% of the short-pay balance under ERCOT Protocol 9.19.

The simplest way to avoid the inconsistent treatment of default balances among market participants is to use the entirety of the securitization proceeds to replenish the prepaid CRR account balances. Alternatively, if the Commission believes that some portion of the proceeds should be used to address the short-pay balance, that amount should be allocated on a pro rata basis

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<sup>10</sup> See, e.g., PURA § 31.002(9) (“‘Independent system operator’ means an entity supervising the collective transmission facilities of a power region that is charged with *nondiscriminatory coordination of market transactions*, systemwide transmission planning, and network reliability.”) (emphasis added).

<sup>11</sup> See ERCOT Proposal at Attach. CNA-5. The total short-pay owed by ERCOT counterparties is reported as \$2,990,776,638. \$318 million is approximately 10.6% of that total.

<sup>12</sup> ERCOT already has stated that Default Balance amounts not recovered through this securitization will need to be recovered pursuant to ERCOT Protocol 9.19. See Direct Testimony of Kenan Ogelman at 27.

across all default amounts owed to ERCOT without preference, not solely to a subset of former market participants.

#### IV. CONCLUSION

Golden Spread appreciates the remarkable time constraints under which ERCOT had to operate as it developed its Proposal. However, the default securitization first should prioritize reimbursing the CRR prepaid account lockbox and, with any remaining securitization proceeds, should not differentiate among types of market participants. For this reason, Golden Spread urges the Commission to approve the changes to the ERCOT Proposal detailed herein.

Respectfully submitted,

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**ATTORNEYS FOR GOLDEN SPREAD  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this pleading has been made available to all parties of record via filing this document on the Commission's Interchange constituting service of the document on all parties to this proceeding pursuant to Order No. 4.

/s/ Todd Kimbrough  
Todd F. Kimbrough