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PUC DOCKET NO. 52321

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

OFFICE OF PUBLIC UTILITY COUNSEL’S STATEMENT OF POSITION

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, respectfully submits this statement of position pursuant to 16 Texas Administrative Code (“TAC”) § 22.124 and the amended procedural schedule adopted by the Commission’s Administrative Law Judge (“ALJ”) in Order No. 2 on July 29, 2021.¹ OPUC filed a motion to intervene in this proceeding on July 27, 2021,² and the motion was granted on July 29, 2021.³ On July 29, 2021, the Commission’s ALJ issued an amended procedural schedule, requiring intervenors to file direct testimony or statement of position by August 12, 2021.⁴ Therefore, pursuant to 16 TAC § 22.124 and Order No. 2, this statement of position is timely filed.

I. INTRODUCTION

After Winter Storm Uri, the Legislature authorized different forms of financing to “serve the public purpose of preserving the integrity of the electricity market in the Electric Reliability Council of Texas (‘ERCOT’) power region.”⁵ Pursuant to Chapter 39, Subchapter M of the Public Utility Regulatory Act (“PURA”),⁶ the Legislature approved a process by which ERCOT can seek approval of a Debt Obligation Order authorizing financing of a Default Balance, which is defined to include: (1) amounts owed to ERCOT by competitive wholesale market participants from the Period of

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

² OPUC’s Motion to Intervene (Jul. 27, 2021).

³ Order No. 2 Granting Intervention (Jul. 29, 2021).

⁴ See Order No. 2 at 2.

⁵ PURA § 39.601(c).

⁶ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016.

Emergency⁷ that otherwise would be or have been uplifted to other wholesale market participants; (2) financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants related to the Period of Emergency; and (3) reasonable costs incurred by a state agency or ERCOT to implement a debt obligation order, including the cost of retiring or refunding existing debt.⁸

In Chapter 39, Subchapter N of PURA, the Legislature authorized ERCOT to seek approval of a Debt Obligation Order to finance the Uplift Balance.⁹ Accordingly, ERCOT filed an Application in Docket No. 52321 for a Default Debt Obligation Order to obtain Commission approval of a Debt Obligation Order that provides for the financing of \$800 million.¹⁰ PURA limits the amount of the default balance that can be financed by ERCOT to \$800 million.¹¹

At the same time, ERCOT filed a separate application in Docket No. 52322 for approval of a Debt Obligation Order to finance Uplift Balances under Chapter 39, Subchapter N of PURA.¹² PURA states the maximum amount of the Uplift Balance allowed to be financed is \$2.1 billion, plus reasonable costs.¹³

As explained by ERCOT, the amount of the Default Balance exceeds \$800 million.¹⁴ First, amounts owed to ERCOT by competitive wholesale market participants from the Period of Emergency that otherwise would be or have been uplifted to other wholesale market participants total approximately \$418 million as of July 7, 2021.¹⁵ Second, financial revenue auction receipts

⁷ See PURA § 39.652(3) “The Period of Emergency is defined as the period beginning 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20, 2021”.

⁸ Tex. Util. Code § 39.602(1)

⁹ PURA § 39.652(4) defines Uplift Balance as an amount of money of not more than \$2.1 billion that was uplifted to load-serving entities on a load ratio share basis due to energy consumption during the period of emergency for reliability deployment price adder charges and ancillary services costs in excess of the commission’s system-wide offer cap, excluding amounts securitized under Subchapter D, Chapter 41. The term does not include amounts that were part of the prevailing settlement point price during the period of emergency.

¹⁰ 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 (Jul. 16, 2021) (Application M).

¹¹ See PURA § 39.602(1).

¹² Application of Electric Reliability Council of Texas, Inc. for a Debt Obligation Order to Finance Uplift Balances Under PURA Chapter 39, Subchapter N, for an Order Initiating a Parallel Docket, and for a Good Cause Exception (July 16, 2021) (Application N).

¹³ See PURA § 39.652(4).

¹⁴ Application M at 5.

¹⁵ *Id.*

used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants related to the Period of Emergency amount to \$800 million.¹⁶ That amount has since been reduced and is now approximately \$766 million as of July 13, 2021.¹⁷ Third, reasonable costs incurred to implement the debt obligation order are not currently known. The cost of retiring or refunding existing debt is currently estimated to be approximately \$50 million.¹⁸ That amount, however, may not be needed if ERCOT is not required to retire or refund existing debt as part of the debt financing mechanisms being requested by ERCOT.

To date, approximately \$418 million is still owed to ERCOT by competitive wholesale market participants that defaulted on their obligations to pay ERCOT for market activity during the Period of Emergency and no longer participate in the ERCOT market (hereinafter referred to as “terminated competitive wholesale market participants”).¹⁹ However, ERCOT already used approximately \$100 million of the \$800 million in financial revenue auction receipts, or Congestion Revenue Right (CRR) auction revenue funds, to pay market participants owed payments that would have otherwise been short-paid the \$100 million due to the \$418 million still owed by terminated competitive wholesale market participants.²⁰ As a result, market participant due payments are now owed approximately \$318 million because of the \$418 million in short payments by terminated competitive wholesale market participants.²¹ Although ERCOT market participants are now owed approximately \$318 million of the \$418 million, the other \$100 million of the \$418 million must now be recovered as part of the Default Balance because it is needed to replenish the financial revenue auction receipts that were used in February 2021.²² Thus, the sum of Default Balance amounts is approximately \$1.1 billion: \$50 million costs; \$318 million owed to short-paid market participants; and \$766 million financial revenue auction receipts used to temporarily reduce short payments, which includes the approximately \$100 million already used to reduce short payments.²³

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 6.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

The \$766 million still needed to replenish financial revenue auction receipts represents the amount remaining from the \$800 million that ERCOT initially used to temporarily reduce short payments to market participants.²⁴ Use of those funds at that time provided necessary liquidity to ERCOT market participants. However, because funds remain outstanding, use of those funds created another potential liquidity issue. 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.²⁵

Chapter 39, Subchapter M of PURA does not prioritize the use of proceeds as between replenishing financial revenue auction receipts used to temporarily reduce short payments or paying market participants in a more timely manner.²⁶ ERCOT proposes to distribute the \$800 million by setting aside approximately \$50 million to defray the costs incurred to implement the Debt Obligation Order and to retire or refund existing debt.²⁷ ERCOT next proposes to apply approximately \$318 million of the proceeds.²⁸

II. SUMMARY OF OPUC'S POSITIONS

OPUC represents the interests of residential and small commercial consumers. The Commission should keep in mind that these residential and small commercial consumers were hit hardest by the winter storm event with resulting extraordinarily high energy costs. Any decision on recovery of default balances and uplift balances will ultimately impose a financial burden on residential and small commercial consumers. Unlike many generators who will be fully paid under the financing orders, residential and small commercial consumers will be repaying these costs for years to come. Thus, OPUC supports a financing order that represents residential and small commercial consumers by allocating costs appropriately and results in the lowest cost financing order possible.

²⁴ *Id.*

²⁵ *Id.* at 7.

²⁶ PURA §§ 39.601(b) and 39.602(1).

²⁷ Application at 7.

²⁸ *Id.*

A. Allocation of Default Payments

The default balance of \$1.1 billion includes three designated areas of costs: (1) \$50 million cost to finance, (2) \$766 million ERCOT borrowed from CRR account holders, and (3) \$318 million to pay market participants who were short paid.²⁹ The Legislature has limited the amount of the Default Balance that can be financed by ERCOT to \$800 million.³⁰ ERCOT proposes to first repay the \$50 million cost to finance, then the \$318 million to pay market participants who were short paid, followed by the \$766 million ERCOT borrowed from CRR account holders.³¹

OPUC recommends that if the amount owed exceeds the aforementioned \$800 million limit, the \$766 million borrowed from CRR account holder should be paid back before other market participants that were short paid. First, \$800 million of financial revenue auction receipts were used to reduce amounts short-paid to wholesale market participants, so market participants have already been compensated a portion of the short pay from CRR accounts.³² Second, many of the CRR account holders represent loads, who paid the extraordinary energy costs caused by the winter storm, while many of the short-paid market participants are generators who benefitted from the energy sales. Third, while use of the CRR account holder funds provided necessary liquidity to ERCOT market participants, not repaying the funds creates another potential liquidity issue. If the financial revenue auction funds are not replenished in a timely manner, ERCOT market participants could face another adverse liquidity scenario.³³

However, if all the \$50 million financing costs are not needed, as suggested by ERCOT,³⁴ and if the Brazos Electric Power Cooperative and Rayburn Country Electric Cooperative amounts, which comprise the majority of the default amounts, are repaid, then the remaining default amounts can be paid in full under the legislative cap.

B. Lowest Cost Financing Option

If the \$50 million financing costs are reduced and the Brazos and Rayburn default balances are repaid, the default balance will be significantly reduced. Depending on the remaining unpaid

²⁹ *Id.* at 5-6.

³⁰ *See* PURA § 39.602(1).

³¹ *Application* at 7.

³² *Id.* at 6.

³³ *Id.* at 7.

³⁴ *Id.*

default balance, the Commission should consider whether the amounts can be recovered at a lower cost under existing ERCOT protocols 9.19.1 (4), which states that “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.”

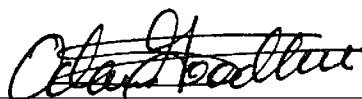
III. CONCLUSION

OPUC supports the entry of a Debt Obligation Order that takes into account the interests of residential and small commercial consumers of Texas by utilizing a financing option and prioritization of the \$800 million in funds that results in the lowest cost to the residential and small commercial consumers who were hit hardest by the winter storm event with resulting extraordinarily high energy costs. OPUC reserves the right to amend or supplement this statement of position by the deadline set forth in the Commission’s rules.

Dated: August 12, 2021

Respectfully submitted,

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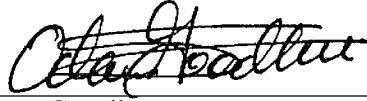
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ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE

PUC Docket No. 52321

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 12th day of August 2021, by facsimile, electronic mail, and/or first class, U.S. mail.



Adam Goodlett