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

TENASKA POWER SERVICES CO.'S STATEMENT OF POSITION

COMES NOW Tenaska Power Services Co. and files this Statement of Position. In support thereof, Tenaska Power Services Co. shows the following:

I. BACKGROUND

The Electric Reliability Council of Texas, Inc. ("ERCOT") filed the above captioned application ("ERCOT Application") dated July 16, 2021.

II. INTRODUCTION

Tenaska Power Services Co. ("TPS") is a Qualified Scheduling Entity ("QSE") in ERCOT, serving as a third party QSE service provider for a substantial number of generating facilities owned by customers that are not affiliated with TPS.[1] TPS provides access to the ERCOT wholesale market, scheduling and settlement services, and other administrative services to these generators and facilitates the purchase and sale of energy products with ERCOT on their behalf. In its role as a QSE service provider, TPS also represents a small number of Retail Electric Providers ("REP") and other Load Serving Entities, all of which sell energy to non-affiliated customers.

TPS submits this Statement of Position to express support for ERCOT's proposal that Default Charges be allocated based on updated transaction data and to provide an alternative solution to avoid imposing substantial liabilities on Independent QSEs that are not contemplated by, and are contrary to, the applicable provisions of the Public Utility Regulatory Act ("PURA")[2] Chapter 39, Subchapter M.[3] ERCOT can perform its obligations by appointing QSEs to act as

[1] In this Statement of Position TPS refers to QSEs that represent unaffiliated market participants as Independent QSEs.
[2] TEX. UTIL. CODE §§ 11.001-66.016.
[3] *See* Application at ERCOT's Proposed Debt Obligation Order, Section 13, para. 53 – 64 (Jul. 16, 2021).

ERCOT's collection agent in calculating and collecting Default Charges from the wholesale market participants represented by such QSEs.

III. APPLICABLE STATUTORY PROVISIONS

PURA, as amended in the recently completed 87th Regular Legislative Session, provides in relevant part:

> **"(d) The independent organization shall collect from and allocate among wholesale market participants the default charges using the same allocated pro rata share methodology under which the charges would otherwise be uplifted under the protocols in effect on March 1, 2021. The default charges must be assessed on all wholesale market participants, including market participants who are in default but still participating in the wholesale market and who enter the market after a debt obligation is issued under this subchapter, and may be based on periodically updated transaction data to prevent market participants from engaging in behavior designed to avoid the default charges."** [4]

As noted in ERCOT's Application and proposed Debt Obligation Order, there are exemptions for ICE[5] and for the City of Lubbock.[6] It is clear that the wholesale market participants referred to in the statute and in the ERCOT Application are not the QSEs (and certainly not Independent QSEs) but are the actual load serving entities, resource entities, and CRR account holders that participated in the market through their representative QSEs (or directly in the case of CRR account holders).

As an example, in the exemption intended to benefit the City of Lubbock, the applicable language states:

> **"[T]he independent system operator in the ERCOT power region may not reduce payments to or uplift short-paid amounts to a municipally owned utility that becomes subject to the jurisdiction of that independent system operator on or after May 29, 2021, and before December 30, 2021 related to a default on a payment obligation by a market participant that occurred before May 29, 2021."**[7]

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[4] PURA Section 39.603(d).
[5] PURA Section 39.603(f).
[6] PURA Section 39.151 (j-1).
[7] *Id.*

The statute here is clearly referring to the municipally owned utility itself, as the market participant, not the QSE (which could be an Independent QSE that represents the municipally owned utility and which became subject to ERCOT's jurisdiction many years ago).[8]

IV. ERCOT'S PROPOSED TREATMENT OF QSES

The proposed Debt Obligation Order states in paragraph 53:

> **"ERCOT seeks authorization to allocate and collect *from QSEs* representing wholesale market participants within the ERCOT wholesale market, in the manner provided in this Debt Obligation Order, Default Charges in an amount sufficient to provide for the timely recovery of the Default Balance approved in this Debt Obligation Order."** (Emphasis added.)

In paragraph 56 of its draft Debt Obligation Order ERCOT states:

> **"Because ERCOT financially transacts with only QSEs and CRR account holders, ERCOT proposes to collect payments of Default Charges *from QSEs* and CRR account holders, either as Obligated MPs[9] or as representing one or more Obligated MPs."** (Emphasis added.)

ERCOT further states in paragraph 56:

> **"In accordance with ERCOT's existing protocols, QSEs and CRR account holders will maintain financially [sic] responsibility for payment of all settlement charges, including Default Charges, regardless of *whether or not an Obligated MP represented by the QSE makes payments to QSE.*** (Emphasis supplied.)

ERCOT explains the reasons for not following the clear requirement of the statute to assess Default Charges on "all wholesale market participants" as follows:

> **"ERCOT proposes to collect payments of Default Charges from QSEs and CRR account holders. As described earlier in my testimony, ERCOT financially transacts with only QSEs and CRR account holders; ERCOT's settlement system is not designed to transact with any other market participant type. [....] ERCOT's settlement process is well-established, accurate, and supported by controls, including detailed credit requirements. *Requiring ERCOT to undertake financial transactions with a different market participant type – e.g., a LSE—would require significant system changes,***

[8] ERCOT proposes to address its logistical issue of allocation by proposing that ICE and the City of Lubbock "should be required to register with ERCOT as its own QSE, sub-QSE, or CRR account holder, as appropriate." *See* Mr. Ogelman's testimony at page 31, lines 7 to 11.

[9] ERCOT's proposed Debt Obligation Order in paragraph 55 creates the definition "Obligated MP's" to refer to wholesale market participants who are not exempted, and it is clear here that ERCOT, itself, is referring to load serving entities and resource entities represented by QSEs not to the QSEs, themselves.

manual workarounds, costs, and protocol revisions, which would likely take the minimum of a year to implement."[10] (Emphasis added.)

V. ERCOT'S PROPOSED ALLOCATION OF DEFAULT CHARGE PAYMENT RESPONSIBILITY TO QSES IS UNAUTHORIZED AND CONTRARY TO PURA SUBCHAPTER M

As noted above, the statute does not authorize Default Charges to be imposed on QSEs but instead prescribes that such charges "must" be assessed by ERCOT on "all" wholesale market participants other than those exempted by statute ("Obligated MPs," as defined by the proposed Debt Obligation Order). The statute's reference to the ERCOT Protocols for methodology provides the basis for determining how charges are allocated among wholesale market participants but does not override the explicit instruction to make the assessment to all wholesale market participants. ERCOT's proposal that the assessment be made exclusively on QSEs (and CRR Account Holders) as a proxy for other wholesale market participants and its failure to provide for a direct assessment to the wholesale market participants that are substantively transacting (through the QSEs) with ERCOT contravene PURA Section 39.603(d).

VI. TPS' PROPOSAL

TPS recognizes that ERCOT does not have systems in place to enable it to allocate and collect Default Charges directly from wholesale market participants without relying on QSEs to administer this allocation and collection effort. If ERCOT's proposal merely clarified the actual mechanics of allocation and collection to rely on QSEs, but without altering the ultimate responsibility for payment, this would be acceptable. However, ERCOT's proposal does indeed shift ultimate responsibility in contravention of the clear words and intent of Subchapter M.

TPS believes that it is neither permissible nor necessary that QSEs be assessed with the ultimate liability for a wholesale market participant's failure to pay Default Charges in order for ERCOT to obtain the necessary assistance from QSEs so that allocation of Default Charges can be administered as required by PURA Section 39.603(d). TPS proposes that QSEs be appointed as a collection agent for Default Charges, and in such capacity, be required to use good faith efforts to allocate and collect from the market participants they represent as QSE the aggregate Default

[10] Mr. Ogelman's Testimony at page 31, line 13 to page 21, line 1.

Charge amounts *provisionally* assessed to the QSE based on QSE settlement activity for the most recent month for which final settlement data is available on a rolling basis. In the event that a QSE is unable to collect the applicable amount from any market participant, represented by and unaffiliated with the QSE, the remedy should be that the defaulting market participant is disqualified from further participation in the ERCOT market. The QSE would not be held liable for such market participant's failure to pay. The missing payment would then be handled in the true-up process described in Section 14 of the proposed Debt Obligation Order so there is no shortfall in funds needed to pay debt service on the securitization bonds. The important point here is that interpreting the statute in a way that makes administration practical and efficient is acceptable, but shifting ultimate responsibility for payment of hundreds of millions (perhaps billions, with interest) of dollars to QSEs that merely provide administrative services rather than participating substantively as a merchant in the market is not.

Specifically, TPS proposes that, in order to comply with PURA Section 39.603(d), the proposed Subchapter M Debt Obligation Order should be revised to:

1. Impose directly upon wholesale market participants the assessment of Default Charges, as expressly required by PURA Section 39.603(d).

2. Clarify that QSEs shall serve as ERCOT's administrative and collection agent on behalf of ERCOT to (a) determine the amount of Default Charges to be allocated to each of its market participant customers; and (b) collect the amount of charges so determined from each such market participant customer.

3. Clarify that QSEs are not personally liable for Default Charges but are only responsible for performing their obligations as administrative and collection agents in good faith.

4. Impose penalties, including a forfeiture of the right to continue participation in ERCOT, upon market participants that fail to pay their assessed Default Charges.

VII. SUPPORT FOR USING UPDATED TRANSACTION DATA IN ALLOCATING RESPONSIBILITY FOR DEFAULT CHARGES

For the same reasons that TPS has concerns about allocating ultimate financial responsibility for Default Charges to QSEs (especially Independent QSEs), TPS supports ERCOT's proposal to base the allocation of Default Charges on updated transaction data, as is specifically authorized by the statute, rather than basing the allocation of such charges on January 2021 transaction data, as would be the case in the existing ERCOT Protocols for a default that

occurred in February 2021. The issues raised above in this Statement of Position would be far more severe if QSEs were required to pursue market participants over the term of the securitization bonds based on what those market participants transacted in January 2021 rather than what the market participants represented by the QSEs transacted a few months prior to the collection date. Over time, historical customer relationships would erode as market participants exit the market, switch QSEs, or become insolvent for unrelated reasons and liquidate. Additionally, the ERCOT market and existing market participants would be irreparably damaged if new market participants were able to circumvent Default Charges due to methodology that uses a fixed historical benchmark. Basing the allocation on updated transaction data provides the best opportunity to give effect to the words and intent of Subchapter M while minimizing defaults and the need for true-ups.

ERCOT correctly notes[11] that the subsection of the ERCOT Protocols that provides for an allocation of uplift based on activity of the month preceding the month of an "event of default" is inapplicable because Subchapter M does not contemplate an allocation based on an event of default. Accordingly, ERCOT properly proposes for the allocation to be made based on the most recent month for which final settlement data is available. But even absent this rationale for excluding consideration of the ERCOT Protocol provision for determining the allocation based on an event of default, the allocation should never-the-less be made based on updated transaction data in accordance with the provisions of PURA Section 39.603(d), which specifically authorizes the use of updated transaction data "to prevent market participants from engaging in behavior designed to avoid the default charges."

If January 2021 transaction data were used rather than, as ERCOT proposes, updated transaction data, the existing wholesale market participants that have a material financial obligation lasting for up to 30 years based on activity that occurred in January 2021 could and likely would, over time, exit the market and seek to avoid these charges. The four months of credit support proposed by ERCOT[12] would not be sufficient to deter this behavior and credit support for 30 years of payments would not be practical. Accordingly, ERCOT's proposed use of updated

[11] Mr. Ogelman's testimony, page 33, lines 5 to 16.
[12] See Mr. Ogelman's testimony at page 35, lines 1-10 regarding ERCOT's proposal to require a four month posting of collateral.

transaction data is both consistent with the statute and the only practical method of allocating and collecting Default Charges.

Dated: August 12, 2021

Respectfully submitted,

/s/ Keith Emery

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CERTIFICATE OF SERVICE

In accordance with Order No. 2 in this docket, filing a document on the Commission's Interchange website constitutes service of the document on all parties to this proceeding.

/s/ Keith Emery
Keith Emery