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

NRG ENERGY, INC.'S POST-HEARING BRIEF

NRG Energy, Inc. (“NRG”) appreciates the opportunity to participate and share its perspective on this vital securitization process. Ensuring that the ERCOT market receives a much-needed infusion of funds now, rather than over the course of many years, will help restore stability to a market still recovering from Winter Storm Uri (the “Storm”). In general, the Debt Obligation Order and the securitization process it proposes are appropriate and the securitization of the default amounts will be beneficial to the ERCOT market. Accordingly, NRG recommends issuance of a Debt Obligation Order substantially similar to the one proposed by ERCOT. However, NRG recommends certain revisions be made to ERCOT’s proposed Debt Obligation Order to reflect clarifications set out in ERCOT’s rebuttal testimony. In summary:

- The proposed Order should be revised to limit true-ups to no more often than a semiannual basis coinciding with existing transmission and distribution utility (“TDU”) tariff rider change dates (i.e., March 1 and September 1);
- The proposed Order should be revised to specify that if ERCOT receives a waiver of its debt covenants allowing it to issue the debt authorized by the Order without defaulting on its existing debt, the \$50 million allocated to debt retirement should be reallocated to Congestion Revenue Rights (“CRR”) receipts;
- The proposed Order should be revised to specify that funds received from Brazos Electric Cooperative (“Brazos”) and Rayburn Country Electric Cooperative (“Rayburn”) will be allocated as credits against those entities’ debts to ERCOT, then CRR receipts, and finally to prepay the debt authorized by the Order; and
- The proposed Order should be revised such that funds collected from market participants for short paid amounts still owed to ERCOT will be allocated to prepayment of the debt authorized by the Order.

With these adjustments NRG recommends approval and issuance of the Debt Obligation Order.

I. THE PROPOSED DEBT OBLIGATION ORDER IS GOOD POLICY

Winter Storm Uri had a significant impact on the electric wholesale market.¹ As testified to by ERCOT witness Kenan Ögelman, “some market participants were unable to pay invoices, which caused ERCOT to have insufficient funds to pay amounts owed to other market participants.”² To help alleviate this strain, the Legislature passed, and the Governor signed, House Bill (“HB”) 4492 which creates a process to address default amounts.³ This is the basis for ERCOT’s Application in this docket.⁴ HB 4492 calls for the \$800 million “Default Balance”⁵ to be funded by the issuance of bonds, which will be backed by the securitized “Default Charges”⁶ to be collected from ERCOT market participants.⁷

Funding the Default Balance is necessary for the continued functioning of the wholesale market. Issuance of the Debt Obligation Order will allow for ERCOT to obtain up to \$800 million in funds from the Comptroller at a low interest rate in order to pay short paid market participants and replenish CRR receipts over a period of 30 years.⁸ By allowing market participants who were short paid to receive funds now, instead of over a period of many decades as would be required under the ERCOT default uplift process, the Debt Obligation Order restores needed liquidity to the market.⁹ The Default Balance allocation and payment process described in the Debt Obligation Order will provide for an efficient and equitable distribution of the securitization funds.¹⁰

¹ Amended Direct Testimony of Bill Barnes, NRG Ex. 1 at 6:7-8.

² Direct Testimony and Attachments of Kenan Ögelman, ERCOT Ex. 2 at 35:19-20.

³ NRG Ex. 1 at 6:19-21.

⁴ *Id.*

⁵ Public Utility Regulatory Act (“PURA”), Tex. Util. Code § 39.602(1) (“Default balance” means an amount of money of not more than \$800 million that includes only: (A) amounts owed to the independent organization by competitive wholesale market participants from the period of emergency that otherwise would be or have been uplifted to other wholesale market participants; (B) financial revenue auction receipts used by the independent organization to temporarily reduce amounts short-paid to wholesale market participants related to the period of emergency; and (C) reasonable costs incurred by a state agency or the independent organization to implement a debt obligation order under Sections 39.603 and 39.604, including the cost of retiring or refunding existing debt.”).

⁶ PURA § 39.602(2) (“Default charges” means charges assessed to wholesale market participants to repay amounts financed under this subchapter to pay the default balance.”).

⁷ NRG Ex. 1 at 6:22-24.

⁸ NRG Ex. 1 at 7:3-5.

⁹ NRG Ex. 1 at 7:6-8; *and see* ERCOT Ex. 2 at 27:13-28:7.

¹⁰ NRG Ex. 1 at 4:11-14

II. RECOMMENDED MODIFICATIONS TO THE PROPOSED DEBT OBLIGATION ORDER

NRG believes that ERCOT's proposed Debt Obligation Order can be strengthened through a series of modifications.¹¹ These modifications are broadly consistent with ERCOT's rebuttal testimony. Included as Attachment A is a redline of those sections of the proposed Debt Obligation Order that contain the changes recommended by NRG.

A. *True-Ups Should be Annual or Semiannual*

First, the Debt Obligation Order should be amended to specify that true-ups will occur on an annual or semiannual basis. PURA § 39.606 requires that the Debt Obligation Order "include a mechanism requiring that default charges be reviewed and adjusted at least annually." ERCOT's proposed Debt Obligation Order would require true-ups as often as quarterly, plus the ability to implement optional interim true-ups as necessary.¹² Such frequent true-ups would make it difficult for market participants to forecast future costs and adjust for them in the course of their business operations and planning.¹³ They are also likely excessive. In his rebuttal testimony, ERCOT witness Charles Atkins did not state that such frequent true-ups were strictly *necessary* to achieve the best financing terms, only that he "recommend[s] mandatory true-up adjustments on at least a semiannual basis."¹⁴

NRG believes that the statutory annual true-ups are sufficient.¹⁵ As a compromise position, NRG recommends the adoption of true-ups not more often than semiannually, and they should coincide with existing March and September TDU tariff rider updates.¹⁶ NRG therefore recommends that Findings of Fact 65 through 74 be revised as set out in Attachment A.

¹¹ Draft Debt Obligation Order, ERCOT Ex. 7.

¹² ERCOT Ex. 7 at Finding of Facts 65-69, 72.

¹³ NRG Ex. 1 at 11:5-6.

¹⁴ Rebuttal Testimony and Attachments of Charles N. Atkins, ERCOT Ex. 9 at 6:12.

¹⁵ NRG Ex. 1 at 11:9.

¹⁶ 16 Texas Administrative Code ("TAC") § 25.193(b) (enabling ERCOT TDUs, as transmission and distribution service providers, to update their transmission costs recovery factor ("TCRF") riders twice per year on March 1 and September 1); 16 TAC § 25.182(d)(8) (providing for a March 1 effective date for yearly updates to the energy efficiency cost recovery factor ("EECRF") rider); 16 TAC § 25.243(e)(6)(C) (setting forth a September 1 effective date for updates to the distribution cost recovery factor ("DCRF") rider for ERCOT TDUs).

B. Funds Not Needed for Existing ERCOT Debt Should be Allocated to Replenish Congestion Revenue Rights Accounts First

ERCOT has stated that under the terms of existing credit facilities it has agreed that it will not (1) create or allow any subsidiary to create additional indebtedness, (2) sell any assets, or (3) enter into any material agreements, without the consent of its existing lenders.¹⁷ ERCOT has pledged that it will seek a waiver of that provision.¹⁸ However, if ERCOT does not receive a waiver it will set aside up to \$50 million of the proceeds in reserve to pay off ERCOT's existing indebtedness.¹⁹

ERCOT has stated in discovery and in its rebuttal testimony that if it is not required to retire or refund existing debt, the \$50 million allocated to that purpose will instead be used to replenish CRR auction revenue funds.²⁰ NRG supports ERCOT's proposal and the allocation of those funds if they are not used. To that end, NRG recommends that an additional sentence be added to Finding of Fact 13 to read, "Any amounts allocated to fund Upfront Costs in excess of ERCOT's actual Upfront Costs shall be reallocated to Revenue Auction Receipts," and that Ordering Paragraph 17 be revised as follows:

ERCOT is authorized, as part of the Securitizable Amount, to finance and pay for its Upfront Costs from the proceeds of the Subchapter M Bonds in accordance with the terms of this Debt Obligation Order. The Upfront Costs are more fully described in, as provided in Findings of Fact Paragraph 13 of this Debt Obligation Order. No individual cap shall apply to any component of the Upfront Costs. Prior to the issuance of Subchapter M Bonds, ERCOT must make a good faith effort to obtain the consent of its existing lenders to the issuance of this debt. If ERCOT secures that consent it will devote the proceeds of the Subchapter M Bonds otherwise allocable to the cost of retiring or refunding existing debt instead to replenish Revenue Auction Receipts.

C. Funds Received from Brazos Electric Cooperative and Rayburn Country Electric Cooperative Should Be Allocated as Set Out in ERCOT's Rebuttal Testimony

ERCOT has stated that a cooperative will receive its pro rata share of the Default Balance used to pay short-paid market participants, but only if the cooperative does not owe ERCOT any money for activity during the period of emergency.²¹ Two electric cooperatives, Rayburn and Brazos,

¹⁷ Rebuttal Testimony and Attachments of Sean Taylor, ERCOT Ex. 10 at 9:5-8.

¹⁸ *Id.* at 9:19.

¹⁹ *Id.* at 9:20-23

²⁰ ERCOT Ex. 10 at 10:1-3; ERCOT's Response to NRG's First Request for Information, NRG Ex. 2 at 5.

²¹ Rebuttal Testimony and Attachments of Kenan Ögelman, ERCOT Ex. 8 at 18:7-9.

currently owe ERCOT substantial sums in default payments related to Winter Storm Uri. At the hearing ERCOT witness Kenan Ögelman testified that if the cooperatives would be entitled to any Default Balance proceeds, they will instead receive a credit against the amounts they owe ERCOT.²² In the case of Rayburn, the credit would directly reduce its debt to ERCOT.²³ As to Brazos, whose debts to ERCOT and others are subject to a bankruptcy proceeding, ERCOT has stated that any proceeds from the Default Balance Brazos would have received will instead be held in a segregated account during the pendency of Brazos’s bankruptcy proceeding.²⁴ The cooperatives will not receive any Default Balance proceeds in the form of payment.²⁵

NRG supports ERCOT’s proposed allocation of Default Balance proceeds otherwise designated for Brazos and Rayburn. The proposed Debt Obligation Order should be revised to reflect this proposal. NRG recommends that a new Finding of Fact 87 be inserted into the Debt Obligation Order that reads,

Any Default Balance proceeds that would otherwise be allocated to Brazos Electric Cooperative (“Brazos”) shall be held in a segregated account during the pendency of Brazos’s present bankruptcy proceeding. Upon resolution of Brazos’s present bankruptcy, Default Balance proceeds otherwise allocated to Brazos shall be assigned to Brazos as a credit against any outstanding amount Brazos owes to ERCOT for short payments during the Period of Emergency. Any Default Balance proceeds that would otherwise be allocated to Rayburn Country Electric Cooperative (“Rayburn”) shall be assigned to Rayburn as a credit against any outstanding amount Rayburn owes to ERCOT for short payments during the Period of Emergency.

D. Excess Collections from Market Participants Should Be Used to Prepay the Debt Obligation

ERCOT has stated in its rebuttal testimony that it anticipates that it will be able to prepay the initial Comptroller-purchased Subchapter M debt obligation facility without any prepayment penalty.²⁶ If ERCOT is able to collect significant amounts owed by market participants, including amounts owed by Brazos and Rayburn, ERCOT intends to use a portion of those proceeds to prepay the Subchapter M debt facility.²⁷ NRG supports this proposal, as it would likely result in a re-

²² Tr. at 71:10-14 (Ögelman Cross) (August 23, 2021).

²³ *Id.* at 18:10-12.

²⁴ *Id.* at 18, fn. 21.

²⁵ ERCOT Ex. 8 at 18:12-13.

²⁶ ERCOT Ex. 10 at 21:3-5.

²⁷ *Id.* at 21:5-8.

amortization of the remaining balance and a corresponding decrease of the Default Charges ERCOT collects from market participants.²⁸ NRG recommends that additional language be added to Ordering Paragraph 40 to read,

ERCOT and BondCo are expressly authorized to use funds ERCOT collects from market participants for amounts the market participants owe ERCOT for activity during the Period of Emergency to prepay Subchapter M Bonds. If such prepayment will incur penalties, and ERCOT or BondCo are unable to secure a refinancing of the Subchapter M Bonds, ERCOT will deposit the recovered amount in a cash collateral account securing the Subchapter M debt obligation facility. When the Subchapter M debt obligation facility has been amortized to an amount equal to the cash collateral, ERCOT will cease collecting Default Charges and instead will use the cash collateral to repay the remaining balance of the Subchapter M facility.

This proposed revision tracks the rebuttal testimony of ERCOT witness Sean Taylor.²⁹


III. CONCLUSION

The funding mechanism contemplated by ERCOT's Debt Obligation Order, including the securitization of Default Charges and issuance of bonds, satisfies the requirements of PURA Chapter 39, Subchapter M. A Debt Obligation Order substantially similar to the one proposed by ERCOT in its application would achieve the policy goals the Legislature set when it enacted the statute. NRG believes that its recommended revisions to ERCOT's Debt Obligation Order would strengthen the securitization and ensure that its proceeds are allocated in the most equitable and functionally beneficial manner possible. As such, NRG requests that ERCOT issue a Debt Obligation Order substantially similar to the one proposed by ERCOT that incorporates the revisions proposed in this brief.

²⁸ *See id.* at 21:8-11.

²⁹ *See* ERCOT Ex. 10 at 21:8-21.

Respectfully submitted,



NRG ENERGY, INC.

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ATTORNEYS FOR NRG ENERGY, INC.

CERTIFICATE OF SERVICE

I certify that on September 1, 2021 this instrument was filed with the Public Utility Commission of Texas and a true and correct copy of it was served on all parties of record in this proceeding by e-mail.



Andrea Moore Stover

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INC. FOR A DEBT OBLIGATION §
ORDER UNDER PURA CHAPTER 39, §
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NRG ENERGY, INC.'S POST-HEARING BRIEF

ATTACHMENT A

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**APPLICATION OF THE ELECTRIC §
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ATTACHMENT A
TO NRG ENERGY, INC.'S POST-HEARING BRIEF

The following sets forth the changes to the proposed Debt Obligation Order recommended in NRG's post-hearing brief. Additional conforming revisions, including additional paragraph renumbering, may be needed to accommodate these changes. ERCOT's proposed Debt Obligation Order can be found in ERCOT Exhibit 7. If the Commission and Administrative Law Judge prefer, NRG can provide a full revised Debt Obligation Order that incorporates these changes.

Findings of Fact

13. As permitted under Subchapter M, ERCOT has requested authorization to, at its option, finance and pay for its Upfront Costs from the proceeds of the Subchapter M Bonds in accordance with this Debt Obligation Order. Any amounts so financed will be counted as part of the Default Balance. Such Upfront Costs may include (i) the cost of original issue discount, credit enhancements and other arrangements to enhance marketability; (ii) the cost of ERCOT's financial advisor; (iii) SEC registration fees, underwriters' fees, rating agency fees, attorneys' fees; (iv) any costs incurred by ERCOT, including costs related to the establishment and maintenance of BondCo(s); (iv) any other costs incurred by ERCOT in connection with the implementation of this Debt Obligation Order; (v) any costs incurred by ERCOT if this Debt Obligation Order is appealed; and (vi) the cost of retiring or refunding existing debt. ERCOT's current existing debt balance as of June 30, 2021 is \$45,000,000. The actual Upfront Costs to be paid from the proceeds of the Subchapter M Bonds will not be known until the Subchapter M Bonds are issued. ERCOT supplemented its testimony with an estimate of Upfront Costs expected to be incurred, including both fixed and variable costs. The form issuance advice letter contains sections for the estimated Upfront Costs to be paid from the proceeds of the Subchapter M Bonds. If ERCOT elects at the time of the issuance of the Subchapter M Bonds to finance Upfront Costs as part of the Default Balance, ERCOT will provide its best estimate of the Upfront Costs associated with the issuance of such series of Subchapter M Bonds to be specified in the issuance advice letter delivered by ERCOT in connection with the issuance of such series of Subchapter M Bonds. ERCOT will update the amount of such Upfront Costs in the issuance advice letter to reflect more current information available to ERCOT prior to the issuance

of the Subchapter M Bonds. Any amounts allocated to fund Upfront Costs in excess of ERCOT's actual Upfront Costs shall be reallocated to Revenue Auction Receipts.

- ...
65. Pursuant to PURA§ 39.606, the Default Charges shall be adjusted each March 1 as necessary, pursuant to an annual true-up ("Annual True-Up") to:
- (1) correct any under-collections or over-collections during the preceding twelve (12) months; and
 - (2) ensure the expected recovery of amounts sufficient to timely provide all payments of principal and interest (or deposits to sinking funds in respect of principal and interest) on the Subchapter M Bonds and any other amounts due in connection with the Subchapter M Bonds (including ongoing fees and expenses and amounts required to be deposited in or allocated to any collection account or subaccount, trustee indemnities, payments due in connection with any expenses incurred by the Indenture Trustee or the servicer to enforce bondholder rights and other payments that may be required pursuant to the waterfall payments set forth in the indenture) during the period for which such Default Charges are to be in effect.
66. With respect to any series of Subchapter M Bonds, the servicer will recalculate Default Charges for the Annual True-Up pursuant to the Standard True-Up Procedure described in Finding of Fact Paragraph 70 and standard true-up procedure described in Finding of Fact Paragraph 71 of this Debt Obligation Order (the "Standard True-Up Procedure"). ~~The servicer shall make adjustment filings related to the Annual True-Up with the Commission within forty five (45) days of the anniversary of the date of the original issuance of the Subchapter M Bonds of that series.~~
67. Six (6) months following the closing of any series of Subchapter M Bonds, the servicer is required to provide a six-month true-up calculation (the "Six Month Calculation"). If the Six Month Calculation projects under-collections of Default Charges, the servicer shall implement a true-up adjustment in accordance with the Standard True-Up Procedure and Finding of Fact Paragraph 71 of this Debt Obligation Order for the remainder of the initial Annual True-Up Period.
68. The servicer is required to provide a semi-annual interim true-up calculation (the "Interim Calculation") ~~twice every year~~ no later than 75 days prior to September 1 each year until the scheduled maturity of the bonds. If an Interim Calculation projects under-collections of Default Charges, then the servicer will implement a true-up adjustment in accordance with the Standard True-Up Procedure and Finding of Fact Paragraph 71 of this Debt Obligation Order for the remainder of the Annual True-Up Period (the "Interim True-Up"). Any recalculated Default Charges effectuated by this paragraph shall take effect each September 1.
- ~~69. The servicer is required to provide a quarterly true-up calculation (the "Quarterly Calculation") every quarter beginning three (3) months after the issuance of Subchapter M~~

~~Bonds and continuing every three (3) months until maturity. If a Quarterly Calculation projects under collections of Default Charges, the servicer shall implement a true-up adjustment in accordance with the Standard True-Up Procedure for the remainder of the Annual True-Up Period.~~

70-69. Because Default Charges will be allocated to the QSEs and CRR account holder representing the Obligated MPs as a monthly charge and allocated on a pro rata basis based upon the QSE or CRR account holder's volume of activity in the market in the most recent month for which final settlement data is available, the collection of Default Charges will not be subject to significant variability caused by dramatic increases or decreases in load. Nevertheless, ERCOT has recommended the adoption of true-up adjustments based upon cumulative differences, regardless of the reason, between the **PPR** (including scheduled principal and interest payments on the Subchapter M Bonds) and the amount of Default Charge remittances to the Indenture Trustee. Adjustments will consider, among other things, the following:

- (1) Any increases or decreases in the **PPR**, including any unanticipated Ongoing Costs relating to the administration and maintenance of the Subchapter M Bonds;
- (2) Any changes to the ERCOT protocols or procedures relating to the forecasting of projected loads, uncollectibles, and delinquencies, including declines in collection from any ERCOT customer class;
- (3) Any changes to the ERCOT protocols relating to its allocation methodology for the collection of Default Charges, to the extent permitted under this Debt Obligation Order; and
- (4) Any changes to the ERCOT protocols or procedures relating to the collection of Default Charges from QSEs or CRR account holders, to the extent permitted under this Debt Obligation Order.

71-70. For each of the true-up calculations described in Findings of Fact Paragraphs 66 through ~~68~~⁶⁹ of this Debt Obligation Order, the servicer will make true-up adjustments in the following manner, known as the "Standard True-Up Procedure":

- (1) With respect to the upcoming Annual True-Up Period ~~described~~:
 - (a) calculate under-collections or over-collections from the preceding Annual True-Up period by subtracting the previous period's Default Charges revenues collected from the **PBR** determined for the same period;
 - (b) estimate any anticipated under-collections or over-collection for the upcoming Annual True-Up period, taking into account the considerations described in Findings of Fact Paragraph ~~69~~⁷⁰ of this Debt Obligation Order;
 - (c) calculate the **PBR** for the upcoming Annual True-Up period, taking into account the total amount of prior and anticipated over-collection and under-collection amounts described in steps (a) and (b) above and calculate the

Monthly Amortization Amount for the **PBR**; and

- (d) assess the updated Monthly Amortization Amount to each QSE in accordance with the Default Charges Assessment Methodology.
- (2) With respect to any standard ~~Interim~~ True-Up Period (as described in Findings of Fact Paragraphs 67 through ~~6869~~ of this Debt Obligation Order):
- (e) calculate under-collections for the interim period by subtracting the interim period's Default Charges revenues collected from the **PBR** determined for the same period;
 - (f) estimate any anticipated under-collections for remaining interim period, taking into account the considerations described in Finding of Fact Paragraph ~~6970~~ of this Debt Obligation Order;
 - (g) calculate the **PBR** for the remaining interim period, taking into account the total amount of prior and anticipated under-collection amounts described in steps (a) and (b) above and calculate the Monthly Amortization Amount for the **PBR**; and
 - (h) assess the updated Monthly Amortization Amount to each QSE in accordance with the Default Charges Assessment Methodology.

15. Optional Interim True-Up of Default Charges

~~71. In addition to the foregoing regular true-up adjustments, interim optional true-up adjustments may be made by the servicer more frequently at any time during the term of the Subchapter M Bonds to correct any under-collection or over-collection, as provided in this Debt Obligation Order, in order to assure timely payment of Subchapter M Bonds based on rating agency and bondholder considerations. Further, the servicer shall make mandatory interim true-up adjustments on a more frequent basis as needed:~~

- ~~(a) if the servicer forecasts that the Default Charge collections shall be insufficient to make all scheduled payments of principal, interest, and other amounts in respect of the Subchapter M Bonds on a timely basis during the current or next succeeding payment period; and/or~~
- ~~(b) to replenish any draws upon the capital subaccount.~~

~~72. In the event of an optional true-up, the interim true-up adjustment shall be filed not less than fifteen (15) days prior to the first billing cycle of the month in which the revised Default Charges shall be in effect.~~

15.16. Additional True-Up Provisions

~~71.74.~~ The true-up adjustment filing shall set forth the servicer's calculation of the true-up adjustment to the Default Charges. The Commission shall have fifteen (15) days after the

date of a true-up adjustment filing in which to confirm the servicer's adjustment complies with PURA and this Debt Obligation Order. Any true-up adjustment filed with the Commission ~~shall should~~ be effective on ~~the sooner of March 1 or September 1 its proposed effective date~~, which shall be not less than ~~thirty (30) fifteen (15)~~ days after ~~approval by the Commission filing~~. Any necessary corrections to the true-up adjustment shall be made in future true-up adjustment filings. ~~Any interim true-up may take into account the PPR for the next succeeding twelve (12) months if required by the servicing agreement.~~

~~72.75.~~ The true-up procedures contained in Finding of Fact Paragraphs 65 through ~~72~~ 74 of this Debt Obligation Order are reasonable to ensure that the collection of Default Charges arising from the Default Property will be sufficient to timely pay principal and interest on the Subchapter M Bonds and any other amounts due in connection with the Subchapter M Bonds, will lower risks associated with the collection of Default Charges, and will result in lower Subchapter M Bonds charges and to support the financial integrity of the wholesale market and is necessary to protect the public interest.

...

~~87.~~ Any Default Balance proceeds that would otherwise be allocated to Brazos Electric Cooperative (“Brazos”) shall be held in a segregated account during the pendency of Brazos’s present bankruptcy proceeding. Upon resolution of Brazos’s present bankruptcy, Default Balance proceeds otherwise allocated to Brazos shall be assigned to Brazos as a credit against any outstanding amount Brazos owes to ERCOT for short payments during the Period of Emergency. Any Default Balance proceeds that would otherwise be allocated to Rayburn Country Electric Cooperative (“Rayburn”) shall be assigned to Rayburn as a credit against any outstanding amount Rayburn owes to ERCOT for short payments during the Period of Emergency.

Ordering Paragraphs

17. Upfront Costs. ERCOT is authorized, as part of the Securitizable Amount, to finance and pay for its Upfront Costs from the proceeds of the Subchapter M Bonds in accordance with the terms of this Debt Obligation Order. The Upfront Costs are more fully described in, as provided in Findings of Fact Paragraph 13 of this Debt Obligation Order. No individual cap shall apply to any component of the Upfront Costs. Prior to the issuance of Subchapter M Bonds, ERCOT must make a good faith effort to obtain the consent of its existing lenders to the issuance of this debt. If ERCOT secures that consent it will devote the proceeds of the Subchapter M Bonds otherwise allocable to the cost of retiring or refunding existing debt instead to replenish Revenue Auction Receipts.

...

40. Flexibility. Subject to compliance with the requirements of this Debt Obligation Order, ERCOT and BondCo shall be afforded flexibility in establishing the terms and conditions of the Subchapter M Bonds, including the final structure of BondCo, repayment schedules,

term, payment dates, collateral, credit enhancement, required debt service, reserves, interest rates, use of original issue discount, hedges, indices and other financing costs and the ability of ERCOT, at its option, to cause one or more series of Subchapter M Bonds to be issued or to create more than one BondCo for purposes of issuing such Subchapter M Bonds. ERCOT and BondCo are expressly authorized to use funds ERCOT collects from market participants for amounts the market participants owe ERCOT for activity during the Period of Emergency to prepay Subchapter M Bonds. If such prepayment will incur penalties, and ERCOT or BondCo are unable to secure a refinancing of the Subchapter M Bonds, ERCOT will deposit the recovered amount in a cash collateral account securing the Subchapter M debt obligation facility. When the Subchapter M debt obligation facility has been amortized to an amount equal to the cash collateral, ERCOT will cease collecting Default Charges and instead will use the cash collateral to repay the remaining balance of the Subchapter M facility.