



## Filing Receipt

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**Peter M. Lake**  
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**Will McAdams**  
Commissioner

**Lori Cobos**  
Commissioner

**Jimmy Glotfelty**  
Commissioner



**Greg Abbott**  
Governor  
**Thomas J. Gleeson**  
Executive Director

## *Public Utility Commission of Texas*

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TO: Chairman Peter M. Lake  
Commissioner Will McAdams  
Commissioner Lori Cobos  
Commissioner Jimmy Glotfelty

cc: All parties of record

FROM: Stephen Journeay  
Commission Counsel

DATE: 8 October, 2021

RE: October 13, 2021 Open Meeting, Item No. 1  
Docket No. 52321, 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

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Attached for your consideration is a draft order that memorializes the Commission's decision in the above-referenced proceeding at the September 23, 2021 open meeting. A redlined and a clean version are attached.

Parties must file any proposed corrections to the draft order no later than noon on Tuesday, October 12, 2021. For any proposed corrections, explain the basis for the correction and cite to evidence in the record that supports the correction.

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DOCKET NO. 52321

APPLICATION OF ELECTRIC	§	PUBLIC UTILITY COMMISSION
RELIABILITY COUNCIL OF TEXAS,	§	
INC. FOR A DEBT OBLIGATION	§	OF TEXAS
ORDER PURSUANT TO CHAPTER 39,	§	
SUBCHAPTER M, OF THE PUBLIC	§	
UTILITY REGULATORY ACT	§	

**DRAFT DEBT OBLIGATION ORDER (REDLINED)**

This Order addresses the application of Electric Reliability Council of Texas, Inc. (ERCOT) under subchapter M of chapter 39 of the Public Utility Regulatory Act (PURA),<sup>1</sup> for approval of the following: (1) the default balance (as ~~hereinafter defined in PURA § 39.602(1)~~) in an aggregate amount of up to \$800 million, (2) the assessment of default charges (as ~~hereinafter defined in PURA § 39.602(2)~~) to all wholesale market participants except those expressly exempted by PURA for the payment of the default balance, (3) the debt obligation financing structure that ERCOT proposed in its application for the financing of the default balance, and (4) the securitization of default charges and the creation of default property to be pledged and assigned by ERCOT as collateral or sold and transferred in connection with the approved financing structure.

In its application filed with the Commission on July 16, 2021, ERCOT seeks Commission approval to finance a default balance in the amount of up to \$800 million.<sup>2</sup> ~~As discussed in this Debt Obligation Order, the Commission finds that ERCOT's application should be approved, as amended by this Debt Obligation Order. The Commission also finds that the financing and/or securitization methodologies approved in this Debt Obligation Order meet all applicable requirements of PURA. Accordingly, the Commission:~~

- (1) approves the default balance in an aggregate amount of up to \$800 million, to be calculated as provided in this Order;

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<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

<sup>2</sup> ~~ERCOT Ex. 1 at 10.~~

- (2) approves the assessment of default charges to all wholesale market participants, except those expressly exempted by PURA, in an amount sufficient to ensure the recovery of amounts expected to be necessary to timely provide all payments of debt service and other required amounts and charges in connection with the subchapter M bonds, as provided in this Order;
- (3) authorizes, subject to the terms of this Order, the issuance of debt obligations (referred to in this Order as subchapter M bonds) in one or more series in an aggregate amount of up to \$800 million for the payment of the default balance; and
- (4) approves the financing or securitization of default charges and the creation of default property ~~to be pledged and assigned by ERCOT as collateral or sold, transferred and assigned, and act as the source of repayment for the Subchapter M Bonds.~~

As provided in PURA § 39.603(a), in order to approve the financing or securitization of the default charges, the Commission must find that the issuance of subchapter M bonds is “needed to preserve the integrity of the wholesale market and the public interest, after considering (1) the need to timely replenish financial revenue auction receipts used by [ERCOT] to reduce amounts short-paid to wholesale market participants, (2) the interests of wholesale market participants that are owed balances, and (3) the potential effects of defaulting those balances to the wholesale market without a financing vehicle.”

ERCOT submitted evidence that the proposed securitization or financing will preserve the integrity of the wholesale market and the public interest by (1) allowing wholesale market participants that are owed money to be paid in a more timely manner, (2) promptly replenishing financial revenue auction receipts temporarily used by ERCOT to reduce the amounts related to winter storm Uri that were short-paid to wholesale market participants, and (3) allowing the wholesale market to pay the default balance over a much shorter time period.<sup>3</sup> Based on the evidence presented, the issuance of subchapter M bonds will preserve the integrity of the wholesale market and support the continued delivery of electricity to serve approximately 26 million Texas customers and the public interest generally.

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<sup>3</sup> ERCOT Ex. 2 (Ögelman Direct) at 27-28.

ERCOT provided a general description of the proposed transaction structure in its application and in the testimony and exhibits submitted in support of its application. The proposed transaction structure does not contain every relevant detail and, in certain places, uses only approximations of certain costs and requirements. The final transaction structure will depend, in part, on (1) the requirements of the Texas Comptroller of Public Accounts (the Comptroller), which is required by law to invest in the subchapter M bonds and (2) the market conditions existing at the time of any refinancing of the subchapter M bonds through a subsequent public or private offering.

In view of these obligations, the Commission establishes certain criteria in this Order that must be met for the approvals and authorizations granted in this Order to become effective. This Order authorizes ERCOT to cause the issuance of subchapter M bonds and to impose, collect, and receive default charges, but only if the final structure of the financing or securitization transaction complies in all material respects with these criteria. ERCOT's compliance with these criteria with respect to each issuance of subchapter M bonds will be evidenced by ERCOT filing with the Commission an issuance advice letter, as provided in this Order. If market conditions make it desirable to issue subchapter M bonds in more than one series (including for the refinancing of previously issued subchapter M bonds), then the authorizations and approvals granted in this Order are effective as to each issuance upon, but only upon, ERCOT's filing with the Commission a separate issuance advice letter for that issuance demonstrating compliance of that issuance with the provisions of this Order.

### **I. Discussion and Statutory Overview**

In February 2021, winter storm Uri resulted in outages at many of the generating resources within the ERCOT region and the demand for power exceeded supply for several days during the storm.<sup>4</sup> These conditions required that the load be involuntarily shed to protect the integrity of the ERCOT transmission grid, and many Texans lost power for extended periods during the storm.<sup>5</sup> The resulting scarcity raised prices in the wholesale electricity market, which caused some wholesale market participants to default on their payment obligations to ERCOT for power under

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<sup>4</sup> ERCOT Ex. 2 (Ögelman Direct) at 19.

<sup>5</sup> *Id.*

the ERCOT Protocols.<sup>6</sup> As a result of these payment defaults, ERCOT was unable to fully pay certain wholesale market participants who were due payments from ERCOT for the power they produced during the storm.<sup>7</sup>

To address these problems, the Texas Legislature during the 87th legislative session enacted two bills that authorized financing mechanisms to provide funds to help ERCOT and market participants meet their obligations. One bill added subchapters M and N to chapter 39 of PURA, and each provided authority for a financing mechanism to address different aspects of the financial problem.<sup>8</sup> The other bill added subchapter D to chapter 41 of PURA to provide a financial mechanism for electric cooperatives to address the cooperatives' extraordinary costs.<sup>9</sup> The Commission concludes that all of the mechanisms authorized by these two bills must be considered together to have a proper understanding of these mechanisms and the goals of the Legislature in authorizing these mechanisms. The Commission further concludes that the mechanisms authorized by these two bills must be considered together to decide whether the standards set out in subchapter M of chapter 39 have been met.

~~In response to these payment defaults, the Texas Legislature passed~~ House Bill 4492 (HB 4492) ~~during the 87<sup>th</sup> Legislative Session ("HB 4492"), which, among other things,~~ authorized ERCOT, under subchapter M of PURA chapter 39, to apply to the Commission for the establishment of a debt financing mechanism to finance the default balance arising from winter storm Uri.<sup>10</sup> The term *default balance* is defined as “an amount of money of not more than \$800 million that includes only (1) amounts owed to [ERCOT] by competitive wholesale market participants from the period [beginning 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20, 2021 (the period of emergency)] 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

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<sup>6</sup> *Id.* at 20.

<sup>7</sup> *Id.* at 21-22.

<sup>8</sup> Act of May 30, 2021, 87th Leg., R.S., ch. 908 (HB 4492), §§ 2-5, 2021 Tex. Gen. Laws \_\_\_\_ (codified at PURA §§ 39.601–.609 (subchapter M) and PURA §§ 39.651–.664 (subchapter N)).

<sup>9</sup> Act of May 28, 2021, 87th Leg., R.S. §§ 1-3, 2021 Tex. Gen. Laws \_\_\_\_ (codified at PURA §§ 41.151–.163).

<sup>10</sup> PURA § 39.603(a)

emergency; and (3) reasonable costs incurred by a state agency or [ERCOT] to implement a debt obligation order under [PURA §§ 39.603 and 39.604], including the cost of retiring or refunding existing debt” owed by ERCOT.<sup>11</sup>

The use of a debt financing mechanism will enable wholesale market participants that are owed money to be paid in a more timely manner, replenish financial revenue auction receipts temporarily used by ERCOT to reduce the amounts related to winter storm Uri that were short-paid to the wholesale market participants, and allow the wholesale market to repay the default balance over time.

The Legislature provided this option for recovering the default balance based on its conclusion that such a financing serves the public purpose of preserving the integrity of the electricity market in the ERCOT region, which serves approximately 26 million Texas customers.<sup>12</sup> As a precondition to the financing, the Legislature required the Commission to find that the issuance of subchapter M bonds is “needed to preserve the integrity of the wholesale market and the public interest,” including approximately 26 million Texas customers, “after considering (1) the need to timely replenish financial revenue auction receipts used by [ERCOT] to reduce amounts short-paid to wholesale market participants; (2) the interests of wholesale market participants that are owed balances; and (3) the potential effects of uplifting those balances to the wholesale market without a financing vehicle.”<sup>13</sup>

HB 4492 also amended § 404.0241 of the Texas Government Code to require the Comptroller to “invest not more than \$800 million of the economic stabilization fund balance to finance the default balance. . . .”<sup>14</sup> “The interest rate charged in connection with the [investment made by the Comptroller] must be calculated by adding the rate determined by the Municipal Market Data Municipal Electric Index, as published by Refinitiv TM3, based on the credit rating of [ERCOT . . .], plus [2.5%].”<sup>15</sup> “The term of the debt obligations may not exceed 30 years.”<sup>16</sup>

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<sup>11</sup> PURA § 39.602(1).

<sup>12</sup> PURA § 39.601(c).

<sup>13</sup> PURA § 39.603(a).

<sup>14</sup> Tex. Gov’t Code § 404.0241(b-1).

<sup>15</sup> Tex. Gov’t Code § 404.0241(b-1).

<sup>16</sup> Tex. Gov’t Code § 404.0241(b-1).

The Comptroller is required to manage the investment described above “as a separate investment portfolio” and is required to “provide separate accounting and reporting for the investments in that portfolio.”<sup>17</sup> The Comptroller is also required to “credit to that portfolio all payments, distributions, interest, and other earnings on the investments in that portfolio.”<sup>18</sup> “The [C]omptroller has any power necessary to accomplish the purposes of managing and investing the assets of the portfolio described [above].”<sup>19</sup> “In managing the assets of that portfolio, through procedures and subject to restrictions the [C]omptroller considers appropriate, the [C]omptroller may acquire, sell, transfer, or otherwise assign the investments as appropriate, taking into consideration the purposes, terms, distribution requirements, and other circumstances of that portfolio then prevailing.”<sup>20</sup>

The amendment to § 404.0241 of the Texas Government Code, provided for in HB 4492, also provides that “[a] person may not bring a civil action against this state, the Texas Treasury Safekeeping Trust Company, or an employee, independent contractor, or official of this state, including the [C]omptroller, for any claim, including breach of fiduciary duty or violation of any constitutional, statutory, or regulatory requirement, in connection with any action, inaction, decision, divestment, investment, report, or other determination made or taken in connection with subsections (b-1), (b-4), and (b-5).”<sup>21</sup> A person who brings an action described is “liable to the defendant for the defendant’s costs and attorney’s fees resulting from the action.”<sup>22</sup>

To enable ERCOT to finance the default balance, the Commission may approve a debt obligation order in accordance with PURA § 39.603(a). ERCOT requested that the Commission issue a debt obligation order authorizing ERCOT to issue evidences of indebtedness or ownership, that are issued under a debt obligation order, that are secured and payable from default charges, and authorized for the public purpose of preserving the integrity of the electricity market in the ERCOT region. The term *default charges* is defined in subchapter M as “charges assessed to

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<sup>17</sup> Tex. Gov’t Code § 404.0241(b-4).

<sup>18</sup> Tex. Gov’t Code § 404.0241(b-4).

<sup>19</sup> Tex. Gov’t Code § 404.0241(b-5).

<sup>20</sup> Tex. Gov’t Code § 404.0241(b-5).

<sup>21</sup> Tex. Gov’t Code § 404.0241(b-2).

<sup>22</sup> Tex. Gov’t Code § 404.0241(b-3).

wholesale market participants to repay amounts financed under [subchapter M] to pay the default balance.”<sup>23</sup>

If subchapter M bonds are approved by the Commission and issued through ERCOT, wholesale market participants are required to pay the principal, interest, and related charges of the subchapter M bonds, as components of the default balance, through default charges. Default charges are nonbypassable charges to be assessed to 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,” and as further provided in this Order.<sup>24</sup>

Under PURA § 39.603(b)(2), “the period over which the default charges must be assessed to repay the debt obligations . . . may not exceed 30 years.” The Commission concludes that this provision prevents the assessment of default charges to wholesale market participants ~~for assessments rendered after the 30-year period, but it does not prohibit recovery of Default Charges for assessments rendered during the 30-year period but not actually collected until after the 30-year period.~~ default charges after the 30-year period to the extent the default charges were assessed during the 30-year period but have not yet been recovered.

PURA requires the Commission and ERCOT to “pursue collection in full of amounts owed to [ERCOT] by any market participant to reduce the costs that would otherwise be borne by other market participants or their customers.”<sup>25</sup> Under PURA § 39.603(d), default charges are required to “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 [this Order] is issued,” and “may be based on periodically updated transaction data to prevent market participants from engaging in behavior designed to avoid the default charges.”<sup>26</sup> Notwithstanding the foregoing, “default charges may not be collected from or allocated to a market participant that (1) otherwise would be subject to a default charge solely as a result of acting as a central counterparty clearinghouse in wholesale market transactions in the ERCOT power region, and (2) is regulated as a derivatives clearing organization, as defined by [section 1a of the Commodity

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<sup>23</sup> PURA § 39.602(2).

<sup>24</sup> PURA §§ 39.603(d), 39.605(1).

<sup>25</sup> PURA § 39.159(c).

<sup>26</sup> PURA § 39.603(d).

Exchange Act (7 U.S.C. § 1a)].”<sup>27</sup> In addition, “[ERCOT] may not reduce payments to or uplift short-paid amounts to a municipally owned utility that becomes subject to the jurisdiction of [ERCOT] 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.”<sup>28</sup>

PURA provides that ERCOT must assess the default charges;<sup>29</sup> however, the rights and interest of ERCOT to “impose, collect, and receive default charges” may be assigned or pledged to a successor under a debt obligation order in connection with the issuance of subchapter M bonds.<sup>30</sup> Such rights become “contract rights until they are first transferred to an assignee or pledged in connection with . . . the issuance of debt obligations, at which time they will become the default property” of the assignee.<sup>31</sup> Default property constitutes “a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of default charges depends on further acts of [ERCOT] or others that have not yet occurred.”<sup>32</sup> “A debt obligation order issued under [subchapter M] shall remain in effect and the property shall continue to exist for the same period as the pledge of the state described by Section 39.609,” that is, “until the principal, interest and premium, and any other authorized charges incurred and contracts to be performed in connection with the related debt obligations have been paid and performed in full.”<sup>33</sup> “All revenues and collections resulting from default charges shall constitute proceeds only of the default property arising from the debt obligation order.”<sup>34</sup> Transactions involving the “transfer and ownership of default property and receipt of default charges are exempt from state and local sales and use, franchise, and gross receipts taxes.”<sup>35</sup>

A debt obligation order under PURA § 39.603 must ensure that “the imposition and collection of default charges authorized in the order shall be nonbypassable by wholesale market

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<sup>27</sup> PURA § 39.603(f).

<sup>28</sup> PURA § 39.151(j-1).

<sup>29</sup> PURA § 39.603(d).

<sup>30</sup> PURA § 39.608(a).

<sup>31</sup> PURA § 39.608(a).

<sup>32</sup> PURA § 39.608(b).

<sup>33</sup> PURA §§ 39.608(b), 39.609.

<sup>34</sup> PURA § 39.608(c).

<sup>35</sup> PURA § 39.607.



participants.”<sup>36</sup> A debt obligation order is also required to “include a mechanism requiring that default charges be reviewed and adjusted at least annually, not later than the 45th day after the anniversary date of the ~~issuance of the order~~ Subchapter M Bonds, to correct over-collections or under-collections over the preceding 12 months and ensure the expected recovery of amounts sufficient to timely provide all payments of debt service” ~~and other required amounts and charges in connection with the subchapter M bonds.~~<sup>37</sup> In addition to the required annual reviews, more frequent reviews are allowed and under certain circumstances required to ensure that the amount of the default charges matches the funding requirements approved in a debt obligation order. A debt obligation order must also “include an adjustment mechanism requiring [ERCOT] to adjust default charges to refund, over the remaining period of the default charges, any payments made by a wholesale market participant toward unpaid obligations from the period of emergency that were included in the financed default balance.”<sup>38</sup>

In its application, ERCOT requested authorization to sell the initial series of subchapter M bonds to the Comptroller as contemplated in PURA and in this Order.<sup>39</sup> Additionally, ERCOT provided evidence that a subsequent refinancing of such initial issuance of subchapter M bonds and sale in public or private markets consistent with market conditions may result in a lower financing cost.<sup>40</sup> Accordingly, the Commission concludes that, subject to the conditions set forth in this Order, ERCOT is authorized to refinance any existing subchapter M bonds held by the Comptroller without further Commission approval. ERCOT is not required to apply for a subsequent order for any refinancing of subchapter M bonds; however, the authority and approval granted in this Order is effective as to any such refinancing upon, but only upon, ERCOT filing with the Commission a separate issuance advice letter for that issuance demonstrating compliance of that issuance with the provisions of this Order.

“Effective on the date the first debt obligations are issued under [subchapter M], if any provision of [PURA] or portion of [PURA] is held to be invalid or is invalidated, superseded,

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<sup>36</sup> PURA § 39.605(1).

<sup>37</sup> PURA § 39.606.

<sup>38</sup> PURA §39.603(c).

<sup>39</sup> ERCOT Ex. 1 at 10.

<sup>40</sup> ERCOT Ex. 3 (Atkins Direct) at 49.

replaced, or repealed, or expires for any reason, that occurrence does not affect the validity or continuation of [subchapter M or any other provision of PURA] that is relevant to the issuance, administration, payment, retirement, or refunding of [any subchapter M bonds] authorized under [subchapter M] or to any actions of [ERCOT], its successors, an assignee, a collection agent, . . . or an issuer and those provisions shall remain in full force and effect.”<sup>41</sup>

The State of Texas pledged, “for the benefit and protection of financing parties and [ERCOT], that it will not take or permit any action that would impair the value of default property, or reduce, alter, or impair the default charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related [subchapter M bonds] have been paid and performed in full.”<sup>42</sup> ERCOT is authorized to include this pledge in any documentation relating to the subchapter M bonds.<sup>43</sup>

The Commission is required to “ensure that the structuring and pricing of [the subchapter M bonds] result in the lowest financing costs consistent with market conditions and the terms of [this Order]” (including, so long as the initial subchapter M bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments<sup>44</sup>).<sup>45</sup>

In this proceeding, ERCOT’s financial analysis shows that financing the amount requested by ERCOT will allow timely replenishment of financial revenue auction receipts used by ERCOT to reduce amounts short-paid to wholesale market participants.<sup>46</sup> Wholesale market participants that are owed balances have an interest in financing the default balance because it provides a prompt method of payment to wholesale market participants who were not paid in full for services

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<sup>41</sup> PURA § 39.604(f).

<sup>42</sup> PURA § 39.609.

<sup>43</sup> PURA § 39.609.

<sup>44</sup> See Direct Testimony and Attachment of Mike Reissig: “The Trust Company shall invest the [Texas Economic Stabilization Investment] Fund in accordance with Section 404.0241(a) of the Government Code, the prudent investor standard. It will consider only those investments appropriate for the TESTIF [Texas Economic Stabilization Investment Fund] given its purpose and the potential for distribution requirements.””

<sup>45</sup> Tex. Util. Code § 39.601(e)

<sup>46</sup> ERCOT Ex. 2 (Ögelman Direct) at 28-29.

provided during the period of emergency.<sup>47</sup> In this proceeding, ERCOT's financial analysis of the amount initially sought to be financed without a financing vehicle demonstrates that recovery under the existing ERCOT Protocols results in recovery of the default balances by wholesale market participants over more than 26 years.<sup>48</sup>

~~In an effort to achieve the Legislature's purpose delineated in HB 4492 of allowing wholesale market participants that are owed money to be paid in a more timely manner, ERCOT filed its application under subchapter M on an accelerated timeline. Accordingly, more detailed information or descriptions of processes that will ultimately implement the financing, to the extent necessary in this proceeding, have been provided in supplemental testimony or in response to discovery.~~

To facilitate compliance and consistency with applicable statutory provisions, this Order adopts the definitions in PURA § 39.602.

## **II. Description of the Proposed Transaction**

A description of the transactions proposed by ERCOT is contained in its application and the filing package submitted as part of the application. A brief summary of the proposed transaction is provided in this section. A more detailed description is included in section III.C., titled Structure of the Proposed Financing.

To facilitate the proposed financing, ERCOT proposed that one or more special purpose funding entities (BondCo) be created. ERCOT will transfer to BondCo the rights to impose, collect, and receive default charges along with the other rights arising under this Order.<sup>49</sup> Upon transfer, these rights will become default property as provided by PURA § 39.608.<sup>50</sup> BondCo will issue subchapter M bonds and will transfer the net proceeds from the sale of the subchapter M bonds to ERCOT in consideration for the transfer of the default property. If ERCOT determines that it is necessary to achieve the lowest overall financing costs consistent with market conditions and the terms of this Order, ERCOT may elect to cause BondCo to be organized and managed in

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<sup>47</sup> *Id.* at 27.

<sup>48</sup> *Id.* at 28.

<sup>49</sup> ERCOT Ex. 4 (Taylor Direct) at 10.

<sup>50</sup> *Id.*

a manner designed to achieve the objective of maintaining BondCo as a bankruptcy-remote entity that would not be affected by the bankruptcy of ERCOT or any other affiliates of ERCOT or any of their respective successors.<sup>51</sup> ERCOT may also elect for BondCo to have at least one independent manager whose approval will be required for certain major actions or organizational changes by BondCo. ERCOT may organize BondCo so that it may issue more than one series of debt under conditions specified in the BondCo organizational documents.<sup>52</sup>

The subchapter M bonds will be issued under an indenture and administered by an indenture trustee. The subchapter M bonds will be secured by and payable solely out of the default charges created under this Order and any other funds pledged under the bond documents.<sup>53</sup> That collateral will be pledged to the indenture trustee for the benefit of the holders of the subchapter M bonds and to secure payment of the default balance.

The servicer of the subchapter M bonds will collect the default charges and remit those amounts to the indenture trustee on behalf of BondCo.<sup>54</sup> The servicer will be responsible for making any required or allowed true-ups of the default charges. If the servicer defaults on its obligations under the servicing agreement, the indenture trustee may appoint a successor servicer. ERCOT will act as the initial servicer for the subchapter M bonds.

Default charges will be calculated to ensure the collection of an amount sufficient to service the principal, interest, and related charges for the subchapter M bonds incurred to implement this Order.<sup>55</sup> Default charges will be allocated among the qualified scheduling entities (each a QSE) and all congestion revenue rights (each a CRR) account holders representing 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.”<sup>56</sup> The default charges will be calculated, assessed, and charged pursuant to the method described in this Order. In addition to the annual true-up required by PURA § 39.606, interim true-ups may be required

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<sup>51</sup> ERCOT Ex. 3 (Atkins Direct) at 42-43.

<sup>52</sup> *Id.* at 43.

<sup>53</sup> ERCOT Ex. 3 (Atkins Direct) at 20.

<sup>54</sup> ERCOT Ex. 3 (Atkins Direct) at 37.

<sup>55</sup> ERCOT Ex. 3 (Atkins Direct) at 20.

<sup>56</sup> PURA § 39.603(d)

and performed as necessary to ensure that the amount collected from default charges is sufficient to service the subchapter M bonds. The methodology for making true-ups and allocation adjustments and the circumstances under which each will be made are described in this Order.

ERCOT's proposed structure for the default charges ~~should be utilized. This structure~~ is designed to provide substantially level annual debt service and revenue requirements over the life of the bond issue, which cannot exceed 30 years. The final structure as described in the final issuance advice letter may incorporate an initial interest rate and amortization period, which may be reset for a subsequent interest rate and amortization period.

In its application<sup>57</sup> filed on July 16, 2021, ERCOT requested authority to securitize default charges and cause the issuance of subchapter M bonds in the aggregate principal amount of up to \$800 million (the securitizable amount) to finance the default balance.<sup>57</sup> The default balance is an amount not to exceed \$800 million and will consist of any combination of the following amounts as may be determined by ERCOT at the time of the issuance of the subchapter M bonds: (1) an estimated \$419 million in amounts owed to ERCOT by competitive wholesale market participants; (2) an estimated \$762.5 million for financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants; and (3) the upfront costs associated with the issuance of the subchapter M bonds and other costs associated with the implementation of this Order and approved in any issuance advice letter, including the cost of retiring or refunding existing debt, as provided in this Order. ERCOT's current existing debt balance as of June 30, 2021 is \$45,000,000.<sup>58</sup>

~~The Commission finds that, should ERCOT so elect at the time of the issuance of the Subchapter M Bonds, ERCOT should be permitted to pay out of the proceeds of the Subchapter M Bonds, the reasonable implementation costs incurred to implement this Debt obligation Order, including Upfront Costs associated with the issuance of the Subchapter M Bonds in accordance with this Debt Obligation Order ("Upfront Costs") and a \$4 million debt service reserve (the "Debt Service Reserve"). Any amounts so financed will be counted as part of the Default Balance. These Upfront Costs may include (i) the cost of original issue discount, credit enhancements and other~~

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<sup>57</sup> ERCOT Ex. 1 at 10.

<sup>58</sup> ERCOT Ex. 4 (Taylor Direct) at 15.

~~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), (v) the cost of retiring or refunding existing debt, as provided in this Debt Obligation Order, and (vi) any costs incurred by ERCOT if this Debt Obligation Order is appealed. The draft issuance advice letter shall reflect the estimated Upfront Costs and Debt Service Reserve to be paid from the proceeds of the Subchapter M Bonds. The amount of such Upfront Costs and Debt Service Reserve will be updated in the issuance advice letter to reflect more current information available to ERCOT prior to the issuance of the Subchapter M Bonds.~~

Through default charges, BondCo may cover the ongoing costs of maintaining BondCo and ongoing costs of servicing subchapter M bonds because those are a cost to repay amounts financed under Subchapter M as authorized by this Order. The draft issuance advice letter will reflect the estimated ongoing costs of servicing and administering each series of subchapter M bonds authorized in this Order. The amount of such ongoing costs will be updated in the final issuance advice letter to reflect more current information available to ERCOT before the issuance of the subchapter M bonds.

As payments are received from a market participant whose unpaid obligation from the period of emergency were included in the subchapter M bonds, BondCo is required under PURA § 39.603(c) to adjust default charges over the remaining period of the subchapter M bonds.

### **III. Findings of Fact**

The Commission makes the following findings of fact.

#### **A. Procedural History**

##### **Identification of Applicant and Background**

1. ERCOT manages the flow of electric power to more than 26 million Texas customers—representing about 90 percent of the state's electric load.<sup>59</sup> As the independent system operator for the region, ERCOT schedules power on an electric grid that connects more than 46,500 miles of transmission lines and more than 710 generation units. It also performs financial settlement for the competitive wholesale bulk-power market and

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<sup>59</sup> ERCOT Ex. 2 (Ögelman Direct at 15).



administers retail switching for 8 million premises in competitive choice areas.<sup>60</sup> ERCOT is a membership-based 501(c)(4) nonprofit corporation governed by a board of directors and is subject to oversight by the Commission and the Texas Legislature.<sup>61</sup> Its members include consumers, cooperatives, generators, power marketers, retail electric providers, investor-owned electric utilities, transmission and distribution providers, and municipally owned electric utilities.<sup>62</sup>

2. ~~DELETED. Winter Storm Uri caused forced outages at many of the generating resources within the ERCOT region.<sup>63</sup> The resulting scarcity drove up prices in the wholesale electricity market, which caused some wholesale market participants to default on their obligations to pay for power in accordance with the ERCOT protocols.<sup>64</sup> In response, the Texas Legislature passed HB 4492 during the 87th Texas Legislative Session, which added Subchapter M to Chapter 39 of PURA and is codified as §§ 39.601-.609.<sup>65</sup> HB 4492 enables ERCOT to obtain timely recovery of the Default Balance, which would otherwise be uplifted to the wholesale market as a result of wholesale market participants defaulting on amounts owed after the pricing event. The financing authorized in Subchapter M to Chapter 39 of PURA allows wholesale market participants to be paid in a timely manner, while also enabling wholesale market participants to pay the Default Balance over time through the assessment of Default Charges.<sup>66</sup>~~
3. ERCOT acts as the central counter-party for all transactions settled in the ERCOT region (i.e., ERCOT is the sole seller to each buyer, and ERCOT is the sole buyer from each seller).<sup>67</sup> It is essential for ERCOT to maintain revenue neutrality as the central counter-party in serving this function. ERCOT generates no profit but instead acts as a clearinghouse through which funds are exchanged between buyers and sellers in the

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<sup>60</sup> *Id.* at 16.

<sup>61</sup> *Id.* at 15.

<sup>62</sup> *Id.*

~~<sup>63</sup> *Id.* at 19.~~

~~<sup>64</sup> *Id.* at 20.~~

~~<sup>65</sup> *Id.* at 10.~~

~~<sup>66</sup> *Id.* at 27.~~

<sup>67</sup> *Id.* at 18.

ERCOT market.<sup>68</sup> In its role as the central counter-party, ERCOT only transacts with market participants registered with ERCOT as a QSE or a CRR account holder.<sup>69</sup> Under the ERCOT Protocols, the QSE is responsible for settling payments and charges with ERCOT on behalf of the load-serving entities (each an LSE) and resource entities it represents.<sup>70</sup>

### Application

4. On July 16, 2021, ERCOT filed an application for a debt obligation order under PURA § 39.603 to finance the securitizable amount of the default balance and to securitize the corresponding default charges and cause the issuance of subchapter M bonds in an aggregate principal amount of up to \$800 million.<sup>71</sup> The application includes exhibits, schedules, attachments, and testimony. ERCOT's application was assigned Docket No. 52321.

### Intervenors

5. An intervention deadline of July 27, 2021 was established by Order No. 1, which was issued on July 20, 2021.<sup>72</sup>
6. The following parties were granted intervention in Order No. 2 filed on July 29, 2021: Texas Industrial Energy Consumers; Just Energy Texas, LP; Fulcrum Energy doing business as Amigo Energy, Tara Energy, and Hudson Energy Services, LLC; NRG Energy, Inc.; City of Garland; DC Energy Texas, LC; City of Austin doing business as Austin Energy; Coalition of Competitive Retail Electric Providers; Lower Colorado River Authority and LCRA WSC Energy; Avangrid Renewables, LLC; Exelon Generation Company, LLC; Shell Energy North America (US), L.P.; Gexa Energy LP; Energy Trading Institute; City of Denton; City of Georgetown; City of Lubbock; BP Energy Company; EDF Energy Services, LLC; Citigroup Energy Inc.; Texas Retail Energy LLC; Luminant

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<sup>68</sup> *Id.* at 17-18.

<sup>69</sup> *Id.* at 18.

<sup>70</sup> *Id.*

<sup>71</sup> ERCOT Ex. 1.

<sup>72</sup> ~~Docket No. 52321, Order No. 1 Entering Protective Order, Requiring Commission Staff's Recommendations, Adopting a Procedural Schedule, and Notifying Parties of a Prehearing Conference (Jul. 20, 2021).~~



Energy Company LLC; Tenaska Power Services Co., TPS 1, TPS II, TPS III, TPS IV, Tenaska TOPS REP LP, TOPS 1, TOPS 5, TOPS 6, and TOPS 7; Advanced Power Alliance; Golden Spread Electric Cooperative, Inc.; Texpo Power LP; Saracen Energy West LP; TerraForm Power Operating LLC; Calpine Corporation; Rayburn Country Electric Cooperative, Inc.; East Texas Electric Cooperative, Inc.; Office of Public Utility Counsel; Enel Trading North America Inc.; Engie Resources LLC and Engie Energy Marketing NA, Inc.; South Texas Electric Cooperative; Morgan Stanley Capital Group, Inc.; Vitol Inc.; RWE Renewables Americas, LLC; Texas Treasury Safekeeping Trust Company; and AEP Energy Partners.<sup>73</sup> Commission Staff also participated in the proceeding.

7. ~~On [[September 23, 2021 / October 7, 2021]], in an open meeting, the Commission deliberated on the merits of ERCOT's application and rendered this final Debt Obligation Order, which, among other things: (a) approved the Default Balance in an aggregate amount of \$800 million; (b) approved the assessment of the Default Charges to all obligated market participants in an amount sufficient to ensure the recovery of amounts expected to be necessary to timely provide all payments of debt service and other required amounts and charges in connection with the Subchapter M Bonds; (c) authorized the issuance of Subchapter M Bonds through ERCOT in one or more series in an aggregate principal amount not to exceed the Securitizable Amount; (d) the securitization of Default Charges and the creation of Default Property to be pledged and assigned by ERCOT as collateral, or sold and transferred, and act as the source of repayment for the Subchapter M Bonds.~~

### Notice of Application

8. ERCOT provided notice of its application to all wholesale market participants through ERCOT's existing communication platforms on July 19, 2021.<sup>74</sup>

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<sup>73</sup> ~~Docket No. 52321, Order No. 2, Finding Application Sufficient and Notice Reasonable, Memorializing Prehearing Conference, and Adopting Amended Procedural Schedule at 1-2 (July 29, 2021).~~

<sup>74</sup> ERCOT Ex. 6.

9. ERCOT provided proof of notice through a filing on July 19, 2021. In Order No. 2, the notice provided by ERCOT was found reasonable.<sup>75</sup>

### Testimony

9A. The following parties filed testimony in this docket: ERCOT; Rayburn Country Electric Cooperative; NRG Energy Inc.; Calpine Corporation; and Commission Staff.

9B. ERCOT filed rebuttal testimony on August 20, 2021.

### Hearing

9C. The Commission held a hearing on ERCOT's application on August 23, 2021.

9D. Post-hearing briefs were filed on September 1, 2021.

## **B. Costs and Amount to Be Securitized**

### **1. Default Balance**

10. The term *default balance* is defined in PURA § 39.602(1) to mean “an amount of money of not more than \$800 million that includes only (a) 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; (b) financial revenue auction receipts used by [ERCOT] to temporarily reduce amounts short-paid to wholesale market participants related to the period of emergency; and (c) reasonable costs incurred by [ERCOT . . .] to implement a debt obligation order under [PURA §§] 39.603 and 39.604, including the cost of retiring or refunding existing debt.”<sup>76</sup>

11. The amounts owed to ERCOT by competitive wholesale market participants from the period of emergency that would be or have been otherwise uplifted to other wholesale market participants are estimated at the time of ERCOT's application to be approximately \$418 million (the unpaid defaulted amounts).<sup>77</sup> This amount has since been revised to \$419 million.<sup>78</sup>

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<sup>75</sup> Docket No. 52321, Order No. 2, Finding Application Sufficient and Notice Reasonable, Memorializing Prehearing Conference, and Adopting Amended Procedural Schedule at 1 (July 29, 2021).

<sup>76</sup> PURA § 39.602(1).

<sup>77</sup> Taylor Direct at p. 12. ~~This amount has since been revised to \$419 million. See Taylor Rebuttal at p. 17, fn 14.~~

<sup>78</sup> Taylor Rebuttal at p. 17, n.14.

12. The financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants related to the period of emergency are estimated as of August 31, 2021~~at the time of ERCOT's application~~ to be \$762.56 million (the revenue auction receipts).<sup>79</sup>

12A. To the extent that the financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants are not replenished through the securitization authorized in this Order, it is appropriate as a matter of due diligence and accountability and to avoid further liquidity issues for the Commission to require ERCOT to file in the compliance docket for this proceeding a plan for full replenishment.

~~11.~~13. As permitted under subchapter M, ERCOT requested authorization to, at its option, finance and pay for its upfront costs from the proceeds of the subchapter M bonds.<sup>80</sup> Any amounts so financed will be counted as part of the default balance. Such upfront costs may include (a) the cost of original-issue discount, credit enhancements, and other arrangements to enhance marketability; (b) the cost of ERCOT's financial advisor; (c) United States Securities and Exchange Commission registration fees, underwriters' fees, rating-agency fees, attorneys' fees; (d) any costs incurred by ERCOT, including costs related to the establishment and maintenance of BondCo; (e) any other costs incurred by ERCOT in connection with the implementation of this Order; (f) any costs incurred by ERCOT if this Order is appealed; and (g) the cost of retiring or refunding existing debt. ERCOT's current existing debt balance as of June 30, 2021 is \$45,000,000.<sup>81</sup> 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. The form of issuance advice letter attached to this Order as appendix A 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

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<sup>79</sup> Taylor Direct at 13. ~~As of August 31, 2021, ERCOT estimates the amount revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants related to the period of emergency to be \$762.5 million.~~

<sup>80</sup> *Id.* at 23.

<sup>81</sup> ERCOT Ex. 4 (Taylor Direct) at 15.

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 before the issuance of the subchapter M bonds.

## **2. Ongoing Costs**

~~12.14.~~ ~~As permitted under Subchapter M,~~ ERCOT requested authorization to assess default charges to recover the ongoing costs of maintaining and servicing subchapter M bonds. Ongoing costs are a cost to repay amounts financed under subchapter M as authorized by this Order. The actual ongoing costs of administering and servicing the subchapter M bonds will not be known until the subchapter M bonds are issued. The form of issuance advice letter attached to this Order as appendix A contains sections for the estimated ongoing costs to be paid from the assessment of default charges. The amount of such ongoing costs will be updated in the issuance advice letter to reflect more current information available to ERCOT before the issuance of the subchapter M bonds. ERCOT's best estimate of the ongoing costs associated with the issuance of each series of subchapter M bonds will be specified in the issuance advice letter delivered by ERCOT in connection with the issuance of such series of subchapter M bonds.

~~13.15.~~ It is necessary and appropriate for ERCOT to recover the ongoing costs associated with servicing and administering subchapter M bonds through the assessment of default charges because those administrative costs are a cost to repay amounts financed under subchapter M. Ongoing servicing and administration costs are necessary and unavoidable costs of financing the subchapter M bonds under PURA. The payment of ongoing costs from default charges is needed to ensure that the necessary costs to service the subchapter M bonds will be covered, ~~and should therefore be approved.~~

## **3. Amounts to Be Securitized**

16. ERCOT requested authority to securitize default charges and cause the issuance of subchapter M bonds to finance the securitizable amount. It is appropriate for ERCOT ~~should to~~ be authorized to cause subchapter M bonds to be issued in an aggregate principal amount not to exceed the securitizable amount of \$800 million, attributable to the portion



of the default balance comprising any combination of the following: (1) the unpaid defaulted amounts, (2) the revenue auction receipts, and (3) upfront costs, as described in the issuance advice letter.- The authorization granted in this Order is subject to the issuance advice letter process described in this Order.

16A. Using the process under ERCOT Protocols § 9.19.1(4) rather than using securitization as authorized in this Order is not appropriate. Using that Protocol process would cause market participants not to be paid in as timely a manner and could present liquidity problems in the wholesale market and drive further uncertainty and destabilization.

~~14.17. ERCOT should be authorized to cause Subchapter M Bonds to be issued in an aggregate principal amount not to exceed the Securitizable Amount, subject to the issuance advice letter process described in Finding of Fact Paragraphs 18 through 24 of this Debt Obligation Order. The issuance of Subchapter M Bonds as provided in this Debt Obligation Order should be approved because the~~ Subchapter M bonds are needed to preserve the integrity of the wholesale market to the benefit of approximately 26 million Texas customers and to promote the public interest generally, after considering the need to timely replenish financial revenue auction receipts used by ERCOT to reduce amounts short-paid to wholesale market participants, the interests of wholesale market participants that are owed balances, and the potential effects of uplifting those balances to the wholesale market without a financing vehicle. Issuance of this Order will allow wholesale market participants that are owed money to be paid in a more timely manner, replenish financial revenue auction receipts temporarily used by ERCOT to reduce the amounts related to winter storm Uri that were short-paid to the wholesale market participants, and allow the wholesale market to repay the default balance over time.

#### 4. Issuance Advice Letter

~~15.18.~~ ERCOT will file in the compliance docket for this proceeding a draft issuance advice letter in the form attached to this Order as appendix A for review by Commission Staff not later than two weeks before the expected date of the commencement of marketing or sale of each series of subchapter M bonds, other than the series to be sold to the Comptroller. ~~In the case of that~~ The issuance advice letter for the series to be sold to the Comptroller, it may will be filed within two weeks of the sale to the Comptroller of subchapter M bonds.

~~Within~~ No later than one week after receipt of the draft issuance advice letter, Commission Staff will provide ERCOT comments and recommendations regarding the adequacy of the information provided. ~~Notwithstanding the foregoing, the Commission staff may elect to expedite their review and provide comments and recommendations to ERCOT more quickly.~~

~~16.~~19. The interest rate on the subchapter M bonds issued to the Comptroller will be determined five business days before the expected closing date for those subchapter M bonds. Because the actual structure and pricing of the subchapter M bonds will not be known at the time this Order is issued, following determination of the final terms of the subchapter M bonds and before issuance of the subchapter M bonds, ERCOT will file in the compliance docket for this proceeding for each series of subchapter M bonds issued, and no later than 24 hours after the pricing of each series of subchapter M bonds, an issuance advice letter. The form of issuance advice letter attached to this Order as appendix A contains sections for the estimated upfront costs to be paid from the proceeds of the subchapter M bonds. Within 60 days of issuance of the subchapter M bonds, ERCOT will submit to the Commission a final accounting of the total upfront costs with respect to such issuance. The issuance advice letter will report the actual dollar amount of the initial default charges and other information specific to the subchapter M bonds issued. All amounts that require computation will be computed using the mathematical formulas contained in the form of the issuance advice letter.

~~17.~~20. Commission Staff may request ~~such~~ revisions of the draft issuance advice letter ~~as may be necessary~~ to ensure that the requirements of PURA and this Order have been met. The initial default charges and the final terms of the subchapter M bonds set forth in the issuance advice letter will become effective on the date of issuance of the subchapter M bonds unless prior to noon on the fourth business day after pricing, the Commission issues an order finding that the proposed issuance does not comply with the requirements of PURA and this Order.

~~18.~~21. If the actual upfront costs payable from the proceeds of the subchapter M bonds (as indicated in ERCOT's issuance advice letter) are less than the upfront costs included in the amount allocated for them from the proceeds of the subchapter M bonds, the periodic

billing requirement (as defined in this Order) for the first semi-annual true-up adjustment will be reduced by the amount of such unused funds (together with interest, if any, earned on the investment of such funds). If the actual upfront costs payable from the proceeds of the subchapter M bonds (as indicated in ERCOT's issuance advice letter) are more than the upfront costs included in the amount allocated for them from the proceeds of the subchapter M bonds, the periodic billing requirement for the first semi-annual true-up adjustment will be increased by the amount necessary for the payment of such excess costs.

~~19-22.~~ The completion and filing of an issuance advice letter in the form of the issuance advice letter attached as appendix A, including the certification from ERCOT discussed in this Order, are necessary to ensure that any securitization actually undertaken by ERCOT complies with the terms of this Order.

~~20-23.~~ The certification statement contained in ERCOT's certification letter will be worded identically with the statement in the form of the issuance advice letter approved by the Commission. Other aspects of the certification letter may be modified to describe the particulars of the subchapter M bonds and the actions that were taken during the transaction.

## **5. Initial Issuance; Refinancing**

~~21-24.~~ ERCOT requests that the initial subchapter M bonds be sold to the Comptroller in a direct private placement as contemplated in PURA, the Texas Government Code, and in this Order. The interest rate to be charged in connection with debt obligations issued pursuant to an investment by the Comptroller is required to be calculated by adding the rate corresponding to the nearest weighted average life of the bonds, determined by the Municipal Market Data Municipal Electric Index, as published by Refinitiv TM3 on the bond pricing date, based on the credit rating of ERCOT, ~~as defined by § 39.602, Utilities Code,~~ plus 2.5%.<sup>82</sup> For this purpose, the Commission determines that each initial subchapter M bond sold to the Comptroller in a direct private placement may bear interest either (a) at a single fixed rate to maturity, applying the principles set forth in the immediately preceding sentence or (b) at an initial fixed rate for the first three years (or

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<sup>82</sup> *Id.*

earlier date), and at a new fixed rate based on the nearest remaining weighted average life of the bond from year three to the scheduled final maturity, with that new fixed rate determined five business days before the commencement of year four, in each case applying the principles set forth in the immediately preceding sentence. The term of the subchapter M bonds to maturity ~~may can~~ not exceed 30 years. ~~The Commission determines that the~~ sale of the initial subchapter M bonds to the Comptroller at the interest rates described above is appropriate, reasonable and in keeping with HB 4492, and it should therefore be approved.

25. ERCOT requests that it be authorized to refinance a portion or all of any prior series of subchapter M bonds (including the initial subchapter M bonds to be sold to the Comptroller as described in this Order) without further Commission approval. Any such refinancing bonds may be offered for sale in public or private markets. ERCOT requests that it not be required to apply for a subsequent order for any refinancing of subchapter M bonds or for review and approval under PURA § 39.151(d-2); however, the authority and approval granted in this Order is effective as to any such refinancing upon, but only upon, ERCOT filing with the Commission a separate issuance advice letter for that issuance and demonstrating compliance of that issuance with the provisions of this Order. ~~subject to the Commission's authority to issue an order finding that the issuance does not comply with the provisions of this Order or PURA.~~

25A. ~~The Commission determines that a~~ Affording ERCOT the ability to refinance any outstanding subchapter M bonds is in the public interest, considering the interest of both the ERCOT market and the State of Texas's interest in the economic stabilization fund, ~~and will, among other purposes,~~ afford ERCOT the ability to expeditiously refinance the Comptroller's investment in subchapter M bonds and, ~~giving~~ ERCOT the greatest opportunity to achieve the lowest overall financing costs under subchapter M, ~~and therefore should be approved.~~

### C. Structure of the Proposed Financing

#### 1. BondCo

26. ~~For purposes of this securitization,~~ ERCOT ~~shall~~ will create one or more special purpose funding entities (each of which is referred to as BondCo). ~~BondCo~~ which shall will be a



Delaware limited liability company with ERCOT as its sole member. BondCo will be formed for the limited purpose of (a) imposing, collecting, and receiving default charges and acquiring default property and related assets to support its obligations under the subchapter M bonds, (b) issuing subchapter M bonds in one or more series, and (c) performing other activities relating thereto or otherwise authorized by this Order. BondCo will not have authority~~be permitted~~ to engage in any other activities and will have no assets other than as contemplated in this Order and related assets to support its obligations under the subchapter M bonds. Obligations relating to the subchapter M bonds will be BondCo's only significant liabilities.

26A. ERCOT will obtain either a United States Internal Revenue Service ruling (e.g., a private letter ruling) or an opinion of tax counsel sufficient to support the issuance of the bonds before issuing the subchapter M bonds.

~~22-27.~~ If ERCOT determines it to be necessary to achieve the lowest overall financing costs consistent with market conditions, ERCOT may elect to cause BondCo to be organized and managed in a manner designed to achieve the objective of maintaining BondCo as a bankruptcy-remote entity that would not be affected by the bankruptcy of ERCOT or any other affiliates of ERCOT or any of their respective successors.

27A. ERCOT may also elect to cause BondCo to have at least one independent manager whose approval will be required for certain major actions or organizational changes by BondCo.

27B. BondCo may also be restricted from amending the provisions of the organizational documents that relate to bankruptcy-remoteness of BondCo without the consent of the independent manager. ~~Similarly,~~

27C. BondCo may also be restricted from instituting bankruptcy or insolvency proceedings, ~~or~~ from consenting to the institution of bankruptcy or insolvency proceedings against it, or ~~from~~to ~~dissolving~~ing, ~~liquidating~~ing, ~~consolidating~~ing, ~~converting~~ing, or ~~merging~~ing without the consent of the independent manager. Other restrictions to facilitate bankruptcy remoteness may also be included in the organizational documents of BondCo, as applicable under rating agency considerations.

27D. It is necessary and appropriate that ERCOT structure BondCo in the manner that will result in lowest overall uplift charges consistent with market conditions.

27E. The initial capital of BondCo will be a nominal amount of \$100. However, if necessary to maintain status as a bankruptcy-remote entity or to preserve ERCOT's status as an exempt 501(c)(4) organization under applicable federal tax and securities laws with respect to any issuance of subchapter M bonds, then as a condition to ~~such~~ the issuance of subchapter M bonds, BondCo will secure the minimum capital as may be required in accordance with such laws and regulations then in effect.

27F. As a condition to accepting any issuance advice letter relating to any issuance of subchapter M bonds in a public or private offering, it is appropriate for the Commission ~~to may~~ require ~~such~~ documentation, opinions, or other assurances as may be reasonably necessary to ensure that the applicable capitalization requirements have been met.

~~23-28.~~ Concurrently with the issuance of any of the subchapter M bonds, ERCOT will transfer and assign to BondCo all of ERCOT's rights under this Order related to the amount of subchapter M bonds to be issued by BondCo, including rights to impose, collect, and receive default charges approved in this Order. ~~Such rights shall constitute a present property right for purposes of contracts concerning the sale or pledge of property, and shall become "Default Property" concurrently with the sale or assignment to BondCo as provided in PURA § 39.608. By virtue of~~After the transfer, BondCo will acquire all of the right, title, and interest of ERCOT in the default property arising under this Order that is related to the amount of subchapter M bonds issued by BondCo.

~~24-29.~~ BondCo will issue one or more series of subchapter M bonds consisting of one or more tranches. BondCo will pledge to the indenture trustee, as collateral for payment of the subchapter M bonds, the default property, including BondCo's right to receive the default charges as and when collected, and certain other collateral described in ERCOT's application.

~~25-30.~~ The use and proposed structure of BondCo and the limitations related to its organization and management are necessary and appropriate to minimize risks related to the proposed financing transactions and to minimize the default charges. ~~Therefore, the use and proposed structure of BondCo should be approved.~~

## 2. Credit Enhancement and Arrangements to Enhance Marketability

~~26.31.~~ ERCOT requested approval to use additional forms of credit enhancement (including letters of credit, reserve accounts, surety bonds, or guarantees) and other mechanisms designed to promote the credit quality and marketability of the subchapter M bonds if the benefits of ~~such those~~ arrangements exceed their cost. ERCOT also asked that the costs of any credit enhancements as well as the costs of arrangements to enhance marketability be included in the amount of upfront costs to be securitized. If the use of original issue discount, credit enhancements, or other arrangements is proposed by ERCOT, ERCOT will provide the Commission's designated representative copies of all cost-benefit analyses performed by or for ERCOT that support the request to use ~~such those~~ arrangements. ~~This finding does not apply to the collection account or its subaccounts established at the time any series of Subchapter M Bonds are issued and as described in any issuance advice letter.~~

~~27.32.~~ ERCOT's proposed use of credit enhancements and arrangements to enhance marketability is customary and ~~is necessary and appropriate~~should be approved to provide the best credit quality and marketability of the subchapter M bonds, provided that ERCOT certifies that the enhancements or arrangements provide benefits greater than their cost and that such certifications are agreed to by the Commission's designated representative.

## 3. Default Property

~~28.33. DELETED~~~~Under PURA § 39.608(a), the rights and interests of ERCOT or its successor under this Debt Obligation Order, including the right to impose, collect, and receive the Default Charges authorized in this Debt Obligation Order, are only contract rights until they are first transferred to an assignee or pledged in connection with the issuance of Subchapter M Bonds, at which time they shall become Default Property.~~

~~29.34.~~ The rights to impose, collect, and receive the default charges approved in this Order along with the other rights arising under this Order will become default property upon the transfer of ~~such those~~ rights by ERCOT to BondCo under PURA § 39.608(a).

~~34A.~~ If subchapter M bonds are issued in more than one series, then the default property transferred as a result of each issuance will be only those rights associated with that portion of the default property securitized by such issuance.

34B. The rights to impose, collect, and receive default charges along with the other rights arising under this Order as they relate to any portion of the total amount authorized to be securitized that remains unsecuritized will remain with ERCOT and will not become default property unless and until transferred to a BondCo in connection with a subsequent issuance of subchapter M bonds.

~~30-35. DELETED. Under PURA § 39.608(b), Default Property constitutes a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of Default Charges depends on further acts of ERCOT or others that have not yet occurred.~~

~~31-36.~~ Default property and all other collateral will be held and administered by the indenture trustee pursuant to the indenture, as described in ERCOT's application. This structure is customary for securitized debt and pledged collateral, and is necessary and appropriate will ~~help~~ to ensure that the lowest financing costs will be achieved, ~~and should therefore be approved.~~

#### **4. Servicer and Servicing Agreement**

~~32-37.~~ ERCOT will execute a servicing agreement with BondCo. The servicing agreement may be amended, renewed, or replaced by another servicing agreement.

37A. The entity responsible for carrying out the servicing obligations under any servicing agreement is the servicer. ERCOT will be the initial servicer but may be succeeded as servicer by another entity under certain circumstances detailed in the servicing agreement and as authorized by the Commission under this Order.

37B. ~~A~~The replacement servicer is not permitted to~~should not~~ begin providing service until the date the Commission approves the appointment and the servicing fee of ~~such~~ the replacement servicer.

37C. Under the servicing agreement, the servicer is required, ~~among other things,~~ to impose and collect the applicable default charges for the benefit and account of BondCo, to make the periodic true-up adjustments of default charges required or allowed by this Order, and to account for and remit the applicable default charges to or for the account of BondCo in accordance with the remittance procedures contained in the servicing agreement without

any charge, deduction, or surcharge of any kind, other than the servicing fee specified in the servicing agreement.

37D. Under the terms of the servicing agreement, if any servicer fails to perform its servicing obligations in any material respect, either the indenture trustee acting under the indenture to be entered into in connection with the issuance of the subchapter M bonds; or the indenture trustee's designee; may, ~~or~~, upon the instruction of the requisite percentage of holders of the outstanding amount of subchapter M bonds, will ~~appoint~~ an alternate party to replace the defaulting servicer, in which case the replacement servicer will perform the obligations of the servicer under the servicing agreement.

37E. The obligations of the servicer under the servicing agreement and the circumstances under which an alternate servicer may be appointed will be more fully described in the servicing agreement.

37F. The rights of BondCo under the servicing agreement will be included in the collateral pledged to the indenture trustee under the indenture for the benefit of holders of the subchapter M bonds.

~~33.~~38. The servicing agreement negotiated as part of any financing under this Order will contain a recital clause that the Commission or its attorney will enforce the servicing agreement for the benefit of Texas wholesale market participants or their customers to the extent permitted by law.

~~34.~~39. The servicing agreement negotiated as part of this securitization will include a provision that ERCOT will indemnify the Commission in connection with any increase in servicing fees that become payable as a result of a default resulting from ERCOT's willful misconduct, bad faith, or negligence in performance of its duties or observance of its covenants under the servicing agreement. ~~The indemnity shall be enforced by the Commission but shall not be enforceable by any wholesale market participant.~~

40. The obligations to continue to provide service and to collect and account for default charges will be binding on ERCOT and its successors.

40A. The default charges will be assessed on all wholesale market participants ~~(except as provided in PURA §§ 39.151(j-1) and 39.603(f))~~ in accordance with this Order, including

on ~~(1)~~ wholesale market participants who are in default but still participating in the wholesale market, and ~~(2)~~ wholesale market participants who enter the market after this Order is issued.

40B. ~~In addition, the~~ The default charges may be based on periodically updated transaction data to prevent wholesale market participants from engaging in behavior designed to avoid the default charges. ~~The Commission shall enforce the obligations imposed by this Debt Obligation Order, its applicable substantive rules, and statutory provisions.~~

~~35.41.~~ 41. The servicing arrangements described in this Order are reasonable and are necessary and appropriate, will to reduce risk associated with the proposed financing, and will, therefore, result in lower default charges, and will help to preserve the integrity of the wholesale market and the public interest ~~and should be approved.~~

## **5. Subchapter M Bonds**

42. BondCo will issue and sell subchapter M bonds in one or more series, and each series may be issued in one or more tranches.

42A. The legal final maturity date of any series of subchapter M bonds will not exceed 30 years from the date of issuance of the first series of subchapter M bonds. The legal final maturity date of each series and tranche within a series and amounts in each series will be finally determined by ERCOT and the Commission's designated representative, consistent with market conditions, at the time the subchapter M bonds are priced, but subject to ultimate Commission review through the issuance advice letter process.

42B. ERCOT will retain sole discretion regarding whether or when to assign, sell, or otherwise transfer any rights concerning default property arising under this Order, or to cause the issuance of any subchapter M bonds authorized in this Order, subject to the ~~right~~ authority of the Commission to find that the proposed issuance does not comply with the requirements of PURA and this Order.

42C. BondCo will issue the subchapter M bonds on or after the fifth business day after pricing of the subchapter M bonds unless, prior to noon on the fourth business day following pricing of the bonds, the Commission issues an order finding that the proposed issuance does not comply with the requirements of PURA and this Order.

~~36.43.~~ The proposed structure—providing substantially level annual debt service and revenue requirements during specified interest and amortization periods, over the expected life of the subchapter M bonds—is in the public interest and is appropriate~~should be used~~. This structure is reasonable ~~and should be approved~~, provided that the issuance advice letter demonstrates that all of the statutory requirements are met.

~~37.44.~~ HB 4492 amended § 404.0241(b-1) of the Texas Government Code to direct the Comptroller to invest not more than \$800 million of the economic stabilization fund balance to finance the default balance through the purchase of investments issued through ERCOT. The interest rate for ~~such those~~ debt obligations is required to be calculated by adding the rate determined by the Municipal Market Data Municipal Electric Index, as published by Refinitiv TM3, based on the credit rating of ERCOT, ~~as defined by PURA § 39.602,~~ plus 2.5%, as described in this Order. Accordingly, notwithstanding anything else in this Order to the contrary, any subchapter M bonds issued through ERCOT for direct purchase and investment by the Comptroller will bear interest at the rate calculated as set forth above, so long as this initial series of subchapter M bonds are outstanding.

## **6. Security for the Subchapter M Bonds**

~~38.45.~~ The payment of the subchapter M bonds and related charges authorized by this Order is to be secured solely by default charges explicitly assessed to repay the subchapter M bonds.

45A. Each series of the subchapter M bonds will be issued pursuant to an indenture administered by the indenture trustee.

45B. The indenture will include provision for a collection account for the series and subaccounts for the collection and administration of the default charges and payment or funding of the principal and interest on the subchapter M bonds and other costs, including ongoing fees and expenses, in connection with the subchapter M bonds, as provided in this Order.

45C. Under the indenture, BondCo will establish a collection account as a trust account to be held by the indenture Trustee as collateral to ensure the payment of the principal, interest, and other costs approved in this Order related to the subchapter M bonds in full and on a timely basis.

45D. The collection account will include a general subaccount, a supplemental capital subaccount, and an excess funds subaccount and may include other subaccounts.

**a. The General Subaccount**

~~39-~~46. The indenture trustee will deposit the default charge remittances that the servicer remits to the indenture trustee for the account of BondCo into one or more segregated trust accounts and allocate the amount of those remittances to the general subaccount. The indenture trustee will on a periodic basis apply moneys in this subaccount to pay expenses of BondCo, to pay principal and interest on the subchapter M bonds, and to meet the funding requirements of the other subaccounts.

46A. The funds in the general subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds (including, to the extent necessary, investment earnings) will be applied by the indenture trustee to pay principal and interest on the subchapter M bonds and all other components of the periodic payment requirement and otherwise in accordance with the terms of the indenture.

**b. ERCOT Equity Contribution to Capital of BondCo**

~~40-~~47. If in connection with the issuance of any subchapter M bonds, ERCOT determines it to be necessary to establish BondCo equity to achieve the lowest overall financing cost, ERCOT may make a capital contribution to BondCo for that series, which capital will be held by BondCo outside of the trust indenture. The amount of the capital contribution is expected to be not less than a required percentage of the original principal amount of each series of subchapter M bonds, as determined pursuant to applicable tax and securities laws and regulations, as well as applicable rating agency considerations and, in the case of the initial subchapter M bonds purchased by the Comptroller, the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments.

47A. The initial ERCOT capital contribution to BondCo will not serve as collateral to ensure timely payment of principal and interest on the subchapter M bonds and all other components of the periodic payment requirement.

47B. The funds representing the initial capital will be invested by ERCOT in short-term high-quality investments.



47C. Upon payment of the principal amount of all subchapter M bonds and the discharge of all obligations that may be paid by use of default charges, all BondCo capital amounts, including any investment earnings, will be released to ERCOT.

41-48. The initial capital contribution to BondCo will be funded by ERCOT in an amount up front and also supplemental capital may be contributed over time, if beneficial for the debt treatment of the transaction for federal tax purposes.

48A. To ensure that wholesale market participants receive the appropriate benefit from the securitization approved in this Order, the proceeds from the sale of the subchapter M bonds will not be applied towards this capital contribution.

48B. Because ERCOT funds this capital investment, it is appropriate that ERCOT ~~should~~ receive the investment earnings earned through the investment of that capital from time to time.

48C. Upon payment of the principal amount of all subchapter M bonds and the discharge of all obligations that may be paid by use of default charges, all amounts of BondCo capital, including any investment earnings, will be released to ERCOT.

**c. The Excess Funds Subaccount**

49. ERCOT will use excess collections to prepay the subchapter M bonds if prepayment does not involve penalties. But to the extent that prepayment involves penalties or refinancing is impossible, ERCOT will instead deposit the excess collections in the excess funds subaccount.

49A. The excess-funds subaccount will hold any default charge remittances and investment earnings on the collection account in excess of the amounts needed to pay current principal and interest on the subchapter M bonds and to pay other periodic payment requirements (including, but not limited to, replenishing the supplemental capital subaccount) or any prepayments without penalties.

49B. Any balance in or allocated to the excess funds subaccount on a true-up adjustment date will be subtracted from the periodic billing requirement for purposes of the true-up adjustment.

49C. The money in this subaccount will be invested by the indenture trustee in short-term, high-quality investments, and such money (including investment earnings on it) will be used by the indenture trustee to pay principal and interest on the subchapter M bonds and other periodic payment requirement.

**d. Supplemental Capital Subaccounts**

42-50. For the up to \$800,000,000 of subchapter M bonds purchased by the Comptroller, ERCOT elected to establish a supplemental capital subaccount into which the indenture trustee will deposit annually \$1,000,000 of collections of default charges as supplemental capital. This supplemental capital will be held by the indenture trustee under terms established in the indenture. This supplemental capital subaccount will be pledged as collateral for the payment of the subchapter M bonds to be sold to the Comptroller. The money in this supplemental capital subaccount will be invested by the indenture trustee in short-term, high-quality investments, and such money (including the investment earnings on it) will be used by the indenture trustee to pay principal and interest on the subchapter M bonds and other periodic payment requirements. Upon payment of the principal amounts of all subchapter M bonds and the discharge of all obligations that may be paid by the use of default charges, all amounts in this supplemental capital subaccount, including any investment earnings, will be released to BondCo for payment to ERCOT. Amounts in this supplemental capital subaccount may be released earlier in accordance with the terms of the indenture.

**e. Other Subaccounts**

42-1.50.1. Other credit enhancements in the form of accounts or subaccounts, including the debt service reserve and a recovery amount subaccount (the recovery amount subaccount) under PURA § 39.603(c) for payments received from market participants whose unpaid amounts were included in the subchapter M bonds, may be utilized for any issuance of subchapter M bonds. If ERCOT subsequently determines that use of an overcollateralization subaccount or other subaccount ~~are~~ is necessary to obtain the highest possible ratings or will otherwise increase the benefits of the securitization, ERCOT may implement such subaccounts, as described in the final issuance advice letter.

## 7. General Provisions

~~43.~~51. The collection account and the subaccounts described above are intended to provide for full and timely payment of scheduled principal and interest on the subchapter M bonds and all other components of the periodic payment requirement.

51A. If the amount of default charges remitted to the general subaccount is insufficient to make all scheduled payments of principal and interest on the subchapter M bonds and to make payment on all of the other components of the periodic payment requirement, the excess funds subaccount and the supplemental capital subaccount will be drawn down, in that order, to make those payments.

51B. Any deficiency in the supplemental capital subaccount because of such withdrawals will be replenished to the supplemental capital subaccount on a periodic basis through the true-up process.

51C. In addition to the foregoing, there may be such additional accounts and subaccounts as are necessary to segregate amounts received from various sources (e.g., amounts received from wholesale market participants); or to be used for specified purposes. Such accounts will be administered and utilized as set forth in the servicing agreement and the indenture.

51D. Upon the maturity of the subchapter M bonds and the discharge of all obligations in respect thereof, remaining amounts in the collection account will be released to BondCo, and amounts equivalent to amounts not representing, or derived from, capital contributed by ERCOT will be credited by ERCOT to wholesale market participants consistent with this Order.

~~44.~~52. The use of a collection account and its subaccounts in the manner ~~proposed by ERCOT set forth in this Order~~ is customary and is reasonable, necessary, —and customary and appropriate, will to lower risks associated with the financing and ~~will in turn help to ensure that the lowest financing costs under subchapter M will be achieved, and should therefore be approved.~~

## 8. Default Charges – Allocation, Collection, Nonbypassability

53. ERCOT seeks authorization to allocate and collect from QSEs and CRR account holders representing wholesale market participants within the ERCOT wholesale market, in the

manner provided in this Order, default charges in an amount sufficient to ensure the recovery of amounts expected to be necessary to timely provide all payments of debt service and other required amounts and charges in connection with the subchapter M bonds approved in this Order. ~~Pursuant to PURA § 39.606,~~

53A. ~~-It is necessary and appropriate that~~ default charges ~~shall~~ be sufficient to ensure the recovery of amounts necessary to timely provide all payments of debt service.

53B. It is necessary and appropriate for ERCOT to recover the ongoing costs associated with servicing and administering subchapter M bonds through default charges because those servicing and administrative costs are a cost to repay amounts financed under subchapter M. ~~Ongoing servicing and administration costs,~~ are necessary and unavoidable costs of financing the subchapter M bonds under PURA, and are. ~~The payment of ongoing costs from Default Charges is~~ needed to ensure that the necessary costs to service the subchapter M bonds will be covered.

54. The subchapter M bonds ~~may~~ will have a legal final maturity of not more than 30 years from the date of the first issuance of subchapter M bonds. However, amounts assessed during the 30-year period may still need to be recovered after the final payment date. ~~PURA § 39.603(b) prohibits the assessment of Default Charges for a period of time that exceeds thirty (30) years from the date of the first issuance of Subchapter M Bonds. This restriction does not, however, prevent the recovery of amounts due at the end of such 30-year period for charges assessed during such 30-year period.~~

54A. ~~It is appropriate and necessary that amounts assessed before a scheduled final payment date be collected even after the final payment date.~~

54B. The initial default charges will be implemented no sooner than the first month following the initial issuance of the subchapter M bonds.

~~45-55. Pursuant to PURA 39.603(d)~~ Default charges will be assessed to all QSEs and CRR account holders that represent wholesale market participants, including wholesale market participants (a) who are in default but still participating in the ERCOT wholesale market and (b) who enter the market after the implementation of this Order, but excluding the following:

- a. any municipally-owned utility that becomes subject to ERCOT's jurisdiction on or after May 29, 2021 and before December 30, 2021. As of the date of this Order, the only municipally owned utility that qualifies for this exemption is the City of Lubbock, acting by and through Lubbock Power & Light.
- b. any wholesale market participant that (i) otherwise would be subject to a default charge solely as a result of acting as a central counterparty clearinghouse in wholesale market transactions in the ERCOT region, and (ii) is regulated as a derivatives clearing organization as defined by section 1a, Commodity Exchange Act (7 U.S.C. § 1a). As of the date of this Order, the only market participant for which this second exemption currently appears to apply is ICE NGX Canada Inc.

55A. To allow ERCOT to effectuate the exemptions, ERCOT requested that qualifying wholesale market participants ~~should~~ be required to register with ERCOT as its own QSE, sub-QSE, or CRR account holder, as appropriate. (Wholesale market participants who are not otherwise exempted from the assessment of default charges as described above are referred to in this Order as obligated market participants). The list of obligated market participants may be periodically updated by ERCOT based on transaction data to prevent wholesale market participants from engaging in behavior designed to avoid default charges.

55B. It is appropriate and necessary for ERCOT to develop and adopt new Protocol provisions to the extent necessary to prevent wholesale market participants from engaging in behavior designed to avoid default charges, including leaving and reentering the market.

~~46.56.~~ 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 market participants or as representing one or more obligated market participants. In accordance with ERCOT's existing Protocols, QSEs and CRR account holders will maintain financial responsibility for the payment of all settlement charges, including default charges, regardless of whether or not an obligated market participant represented by the obligated market participant makes payments to its respective QSE or CRR account holder.

~~47.57.~~ ERCOT proposed to create a new monthly settlement invoice for default charges. Default charges will be assessed and collected in accordance with the billing and collection standards for wholesale market participants as set forth in the ERCOT Protocols, as the same may be modified from time to time.

~~57A.~~ It is appropriate for ERCOT ~~shall~~to develop and adopt new Protocol provisions governing the assessment and collection of default charges in accordance with this Order and PURA.

~~48.58.~~ ~~ERCOT, acting as servicer, and any subsequent~~The servicer, will assess nonbypassable default charges to each QSE and CRR account holder representing one or more obligated market participants.

~~58A.~~ Default charges will be assessed using the same pro rata share methodology under which the charges would otherwise be uplifted to each obligated market participant under the ERCOT Protocols in effect on March 1, 2021.

~~58B.~~ ERCOT Protocols section 9.19.1, effective on March 1, 2021, provides the methodology for calculating a market participant's share of an uplift amount in the event that a default (i.e., a short-payment) occurs by another market participant. Protocols section 9.19.1(1) specifies that ERCOT will "collect the total short-pay amount for all Settlement Invoices for a month, less the total payments expected from a payment plan, from [QSEs] and CRR Account Holders." In calculating a market participant's uplift share, Protocols section 9.19.1(2) specifies that ERCOT must use settlement data "in the month prior to the month in which the default occurred," but this fails to allow for the assessment of default charges to market participants that enter the market after a debt obligation order is issued as required by PURA § 39.603(d). Furthermore, Protocols section 9.19.1(3) provides that the uplifted short-paid amount is to be allocated to market participants based on a pro rata share of their respective activity on a megawatt-hour basis.

~~59.~~ PURA § 39.603(d) states that default charges are to be allocated using the same allocated pro rata methodology as set forth in the Protocols, but it does not contemplate allocation based on an event of default.

~~59A.~~ ~~Therefore, f~~For purposes of this Order, ERCOT will allocate default charges to QSEs and CRR account holders representing one or more obligated market participants based on the

QSE's and CRR account holder's volume of activity in the market in the most recent month for which final settlement data is available on a rolling basis, rather than based on settlement data in the month prior to the month in which the default occurred. The volume of activity will be calculated by ERCOT using the formula in Protocols section 9.19.1 that was effective on March 1, 2021. For example, if ERCOT assesses default charges among market participants under subchapter M in June 2022, then ERCOT proposes to calculate pro rata allocations based on QSE and CRR account holder activity in March 2022 (or the most recent month with final settlement data available).

~~49-60.~~ In keeping with the Protocols described in this Order, the precise allocation methodology to be utilized by ~~ERCOT, or any subsequent servicing entity~~ the servicer, for the assessment of default charges is set forth below (the default charges assessment methodology):

- a. ~~ERCOT (or any subsequent servicing entity)~~ The servicer will determine the periodic billing requirement (described below) that must be billed for any given period (as described in this Order). The periodic billing requirement will be updated at least annually; and will be updated on an interim basis from time to time in accordance with the true-up procedures described in this Order.
- b. ~~ERCOT (or any subsequent servicing entity)~~ The servicer will amortize the periodic billing requirement monthly for the given period (the monthly amortization amount).
- c. ~~ERCOT (or any subsequent servicing entity)~~ The servicer will assess the monthly amortization amount to each ~~to~~ QSE and CRR account holder representing one or more obligated market participants, as a monthly charge, on a pro rata basis based on 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.

~~50-61.~~ The periodic payment requirement is the required periodic payment for a given period (~~i.e., annually, semi-annually, or quarterly~~) due under the subchapter M bonds. Each periodic payment requirement includes (a) the principal amortization of the subchapter M bonds in accordance with the expected amortization schedule (including deficiencies of previously scheduled principal for any reason); (b) periodic interest on the subchapter M bonds (including any accrued and unpaid interest); and (c) ongoing costs consisting of the

servicing fee, rating agencies' fees, trustee fees, legal and accounting fees, any taxes imposed on BondCo, and other ongoing fees and expenses. The initial periodic payment requirement for the subchapter M bonds issued under this Order ~~should~~will be updated in the issuance advice letter.

~~51.~~62. The periodic billing requirement represents the aggregate dollar amount of default charges that must be billed during a given period (~~i.e., annually, semi-annually, or quarterly~~) so that the default charge collections will be sufficient to meet the sum of all periodic payment requirements~~PPR~~ for that period, and also after taking into account (a) forecast usage data for the period, (b) forecast uncollectibles for the period; (c) forecast lags in collection of billed default charges for the period, and (d) total potential exposure.

~~52.~~63. ERCOT will require each QSE or CRR account holder that is responsible for one or more obligated market participants to post collateral equal to four months of estimated default charges. If an obligated market participant exits the market, ERCOT will retain the collateral held for the QSE or CRR account holder that represents that obligated market participant to the extent necessary to account for unpaid default charges. If any QSE or CRR account holder representing any obligated market participant defaults on or disputes the payment of any default charges, then ERCOT or any subsequent holder of the default property will be entitled to exercise any remedies and take any action in accordance with PURA, Commission substantive rules, a Commission Order, or the ERCOT Protocols then in effect.

64. The billing and collection standards, default charges assessment methodology, remedies, and other procedures described in this Order are appropriate and reasonable for the assessment and collection of default charges sufficient to support the timely payment of 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 will~~ support the financial integrity of the wholesale market, and are~~is~~ necessary to protect the public interest.



64A. ERCOT Protocols § 9.19.1(4) caps amounts billed through the default uplift invoice process to \$2.5 million every 30 days. The cap is distinct from any pro rata share allocation methodology.

64B. The default charges authorized in this Order under subchapter M of PURA chapter 39 are distinct from charges billed through the default uplift invoice process. The charges discussed in Protocols § 9.19.1(4) are uplifted and paid back over time, whereas securitization under subchapter M provides payment to short-paid market participants in a more timely manner and has a separate process for assessment and collections, as provided in this Order

64C. It is not appropriate to apply the \$2.5-million cap in Protocols § 9.19.1(4) to the default charges authorized in this Order.

## **9. Mandatory True-Up of Default Charges**

53. Pursuant to PURA § 39.606 states that a debt obligation order must include a mechanism requiring that; the default charges ~~shall~~ be reviewed and adjusted at least annually pursuant to an annual true-up ("Annual True-Up") to:

54. a. correct any under-collections or over-collections during the preceding ~~twelve (12)~~ months; and to

55-65. b. ensure the expected recovery of amounts sufficient to timely provide all payments of ~~debt service, 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.~~

56-66. 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 this Order. The servicer will make adjustment filings related to the annual true-up with the

Commission ~~no later than the~~~~within forty-five (45th)~~ days ~~after~~~~of~~ the anniversary of the date of this ~~Order~~~~original issuance of the subchapter M bonds of that series.~~ Those adjustment filings will be made in the compliance docket for this proceeding.

~~57-67.~~ Six 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 will implement a true-up adjustment in accordance with the standard true-up procedure for the remainder of the initial annual true-up period.

~~58-68.~~ The servicer is required to provide a semi-annual interim true-up calculation (the interim calculation) every 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 for the remainder of the annual true-up period.

~~59-69.~~ The servicer will report amounts paid or recovered from market participants whose unpaid obligations from the period of emergency were included in the subchapter M bonds so that, consistent with PURA § 39.603(c), amounts on deposit in the recovery amount subaccount can be used to pay portions of the default charges over the remaining term of the subchapter M bonds.

~~60-70.~~ Because default charges will be allocated to the QSEs and CRR account holders representing the obligated market participants as a monthly charge and allocated on a pro rata basis based on 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 recommended the adoption of true-up adjustments based on cumulative differences, regardless of the reason, between the periodic payment requirement (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:

- a. Any increases or decreases in the periodic payment requirement, including any unanticipated ongoing costs relating to the administration and maintenance of the subchapter M bonds;
- b. 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;
- c. Any changes to the ERCOT Protocols relating to its allocation methodology for the collection of default charges, to the extent permitted under this Order; and
- d. 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 Order.

~~64.71.~~ For each of the true-up calculations described in this Order, the servicer will make true-up adjustments in the following manner, known as the standard true-up procedure:

- a. With respect to the upcoming annual true-up period,
  - i. 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 periodic billing requirement determined for the same period;
  - ii. estimate any anticipated under-collections or over-collections for the upcoming annual true-up period, ~~taking into account the considerations described in Findings of Fact Paragraph 70 of this Debt Obligation Order;~~
  - iii. calculate the periodic billing requirement 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 (i) and (ii) above and calculate the monthly amortization amount for the periodic billing requirement; and
  - iv. assess the updated monthly amortization amount to each QSE and CRR account holder in accordance with the default charges assessment methodology.

- b. With respect to any standard interim true-up period ~~(as described in Findings of Fact Paragraphs 67 through 69 of this Debt Obligation Order)~~,:
- i. calculate under-collections for the interim period by subtracting the interim period's default charges revenues collected from the periodic billing requirement determined for the same period;
  - ii. estimate any anticipated under-collections for the remaining interim period, ~~taking into account the considerations described in Finding of Fact Paragraph 70 of this Debt Obligation Order~~;
  - iii. calculate the periodic billing requirement for the remaining interim period, taking into account the total amount of prior and anticipated under-collection amounts described in steps (i) and (ii) above and calculate the monthly amortization amount for the periodic billing requirement; and
  - iv. assess the updated monthly amortization amount to each QSE and CRR account holder in accordance with the default charges assessment methodology.

#### **10. Optional and Mandatory Interim True-Up of Default Charges**

~~62.72.~~ In addition to the ~~foregoing~~ regular true-up adjustments, ERCOT proposed that 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, as provided in this Order, to assure timely payment of subchapter M bonds based on rating-agency and bondholder considerations.

72A. ~~ERCOT also proposed that~~ ~~Further,~~ the servicer ~~shall~~ make mandatory interim true-up adjustments on a more frequent basis as needed under the following circumstances:

- a. if the servicer forecasts that the default charge collections will 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 ERCOT voluntary supplemental capital injections, and any other draws on any subaccounts, as required by the indenture.

~~63.~~73. In the event of an optional true-up, the interim true-up adjustment will be filed in the compliance docket for this proceeding not less than 15 days prior to the first billing cycle of the month in which the revised default charges will be in effect.

## 11. Additional True-Up Provisions

~~64.~~74. The true-up adjustment filing will set forth the servicer's calculation of the true-up adjustment to the default charges. The Commission will have 15 days after the date of a true-up adjustment filing ~~in which~~ to confirm the servicer's adjustment complies with PURA and this Order. Any true-up adjustment filed with the Commission ~~should be~~ is effective on its proposed effective date, which will be not less than 15 days after filing. Any necessary corrections to the true-up adjustment will be made in future true-up adjustment filings. Any interim true-up may take into account the periodic payment requirement for the next succeeding 12 months if required by the servicing agreement.

74A. If subchapter M bonds are issued in more than one series, then each series will be subject to separate true-up adjustments. However, more than one series may be trued-up in a single proceeding.

~~65.~~75. The true-up procedures contained in ~~Finding of Fact Paragraphs 65 through 74 of this Debt Obligation Order~~ are reasonable and appropriate 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, will ~~and to~~ support the financial integrity of the wholesale market, and are ~~is~~ necessary to protect the public interest.

## 12. Designated Representative

~~66.~~76. ~~In order to~~ To ensure, as required by PURA § 39.601, that the structuring and pricing of the subchapter M bonds result in the lowest financing costs consistent with market conditions and the terms of this Order (including, so long as the initial subchapter M bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments), ~~the Commission finds that~~ it is necessary and appropriate for the Commission or its designated representative to have a decision-making role co-equal with ERCOT with

respect to the structuring and pricing of the subchapter M bonds and ~~for that~~ all matters related to the structuring and pricing of the subchapter M bonds ~~shall to be~~ determined through a joint decision of ERCOT and the Commission or its designated representative. The Commission's ~~participation primary goal is to~~ will ensure that the structuring and pricing of the subchapter M bonds result in a balance between obtaining the lowest financing costs and expediting the funding of the default balance consistent with market conditions and the terms of this Order (including, so long as the initial subchapter M bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments).

~~67.~~77. It is necessary and appropriate that ~~The~~ Commission or its designated representative ~~must~~ have an opportunity to participate fully and in advance in all plans and decisions relating to the structuring, marketing, and pricing of the subchapter M bonds and that it must ~~be~~ provided timely information as necessary to allow it to participate in a timely manner, including, but not limited to, information prepared for the benefit of rating agencies and information prepared for use in marketing the subchapter M bonds to investors.

~~68.~~78. It is necessary and appropriate that t~~The~~ Commission or its designated representative ~~may~~ have an opportunity to require a certificate from any underwriter(s) confirming that the structuring, marketing, and pricing of the subchapter M bonds resulted in the lowest financing costs consistent with market conditions, the marketing plan, and the terms of this Order, including, so long as the initial subchapter M bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments.

79. ~~ERCOT stated that it expected~~ the following transaction documents to be executed in connection with each series of subchapter M bonds issued pursuant to this Order: administration agreement, indenture, limited liability company agreement, default property servicing agreement, and default property purchase and sale agreement. The Commission's designated representative will be afforded an opportunity to review and comment on these documents before they are finalized, and the final versions will be consistent with this Order.

79A. The Commission may incur costs to engage its representative, and such costs are necessary and appropriate to include in the upfront costs to ensure that the Commission may properly exercise its role in the issuance of subchapter N bonds.

### 13. Lowest Financing Costs

80. PURA § 39.601(e) states that~~directs~~ the Commission ~~must~~to ensure that the structuring and pricing of ~~the financings issued under~~ subchapter M bonds result in the lowest financing costs consistent with market conditions and the terms of this Order (including, so long as the initial subchapter M bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments).<sup>83</sup> PURA § 39.601(e) further states that in making this determination any present value calculation must use a discount rate equal to the proposed interest rate on the bonds. ~~Pursuant to PURA 39.601(e), t~~

80A. The financing ~~must needs to~~ be promptly consummated to achieve the goal in PURA § 39.601(c) of preserving the integrity of the electricity market,~~which is~~ The goal of preserving the electricity market's integrity has to be balanced against achieving the lowest financing costs. Financing the default balance in the~~is~~ manner described in this Order will allow wholesale market participants to be paid in a more timely manner in accordance with PURA § 39.603(b). ~~In making this determination, any present value calculation (if any) must use a discount rate equal to the proposed interest rate on the financings.~~<sup>84</sup>

80B. The ~~Commission finds that the~~ financing structure ~~contemplated approved~~ in this ~~Debt Obligation Order, including the securitization of Default Charges and the initial issuance of Subchapter M Bonds in the form required so that the Comptroller shall invest in them,~~ will result in the lowest financing costs consistent with market conditions and the terms of this Order (including, so long as the initial subchapter M bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments).

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<sup>83</sup> ~~Tex. Util. Code~~PURA § 39.603(a);

<sup>84</sup> ~~Tex. Util. Code § 39.601(e);~~



69.81. ERCOT proposed a transaction structure that is expected to include (but is not limited to) the following:

- a. the use of BondCo as issuer of the subchapter M bonds, limiting the risks to subchapter M bonds holders of any adverse impact resulting from a bankruptcy proceeding of its parent or any affiliate;
- b. the right to impose and collect default charges that are nonbypassable and ~~which~~ that must be trued-up at least annually, but more frequent true-ups may be required ~~to be trued-up more frequently~~ under certain circumstances to assure the timely payment of the debt service and other ongoing costs;
- c. the establishment of a recovery amount subaccount under PURA § 39.603(c) to provide a mechanism to adjust default charges to account for payments made by market participants whose unpaid obligations incurred during the period of emergency were included in the subchapter M bonds;
- d. if and to the extent ~~that BondCo, in order~~ required for BondCo to maintain status as a bankruptcy-remote entity or for ERCOT to preserve ~~its~~ ERCOT's status as an exempt 501(c)(4) organization under applicable federal tax and securities laws with respect to any issuance of subchapter M bonds, then as a condition to such issuance, BondCo will secure the minimum capital as may be required in accordance with such laws and regulations then in effect;
- e. benefits for federal income tax purposes including the following: (i) the transfer of the rights under this Order to BondCo not resulting in gross income to ERCOT and the future revenues under the default charges being included in ERCOT's gross income under its usual method of accounting; (ii) the issuance of the subchapter M bonds and the transfer of the proceeds of the subchapter M bonds to ERCOT not resulting in gross income to ERCOT; (iii) avoiding federal corporate income tax on the separate operations of BondCo; and (iv) the subchapter M bonds constituting obligations of ERCOT;
- f. other features to meet requirements to obtain debt treatment for federal tax purposes and also to satisfy the requirements of applicable securities laws and regulations;
- g. marketing the subchapter M bonds ~~shall be marketed~~ using proven underwriting and marketing processes; through which market conditions and investors'

preferences; with regard to the timing of the issuance, the terms and conditions, related maturities, and other aspects of the structuring and pricing will be determined, evaluated, and factored into the structuring and pricing of the subchapter M bonds, including applying factors, as applicable, to the Comptroller's required investment in subchapter M bonds; and

- h. furnishing timely information to the Commission's designated representative to allow the Commission through the issuance advice letter process to ensure that the structuring and pricing of the subchapter M bonds result in the lowest financing costs consistent with market conditions and the terms of this Order (including, so long as the initial subchapter M bonds are outstanding, the statutorily required interest rate payable to the Comptroller on its required investment and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments).

~~70-82.~~ ERCOT's proposed transaction structure is necessary and appropriate to ensure that the structuring and pricing of the subchapter M bonds ~~shall~~ result in the lowest financing costs consistent with market conditions; and the terms of this Order (including, so long as the initial subchapter M bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments). ~~and ensures the preservation of the integrity of the wholesale market and the public.~~

#### **~~14. Personal Liability~~**

~~71-83. DELETED. The Subchapter M Bonds authorized to be issued pursuant to this Debt Obligation Order and PURA § 39.603 will be a nonrecourse debt secured solely by the Default Charges created by this Debt Obligation Order (including the Default Charges explicitly assessed to repay the Subchapter M Bonds), and the Subchapter M Bonds will not create a personal liability for ERCOT.~~

#### **D. Use of Proceeds**

~~72-84.~~ Upon issuing the subchapter M bonds, BondCo will use the net proceeds from the sale of the subchapter M bonds after payment of upfront costs to pay to ERCOT for the recovery of unpaid defaulted amounts and revenue auction receipts.

~~73-85.~~ To the extent not pledged or applied toward the repayment of outstanding subchapter M bonds, the proceeds of the sale of default property will also be applied by ERCOT for the recovery of unpaid defaulted amounts and revenue auction receipts.

86. Through the steps described in this Order, the net proceeds from the sale of subchapter M bonds will be used “solely for the purpose of financing the default balances that otherwise would be or have been uplifted to the wholesale market” in accordance with PURA § 39.601(d).

86A. The authorization granted in this Order is based on the facts known at the time of issuing the Order, and a stated purpose under PURA § 39.601(b)(1) for the securitization authorized in this Order is to “allow wholesale market participants that are owed money to be paid in a more timely manner.” Therefore, it is appropriate for the Commission to limit the approval granted by this Order for ERCOT to cause the issuance of subchapter M bonds in one or more series in accordance with this Order to a period commencing with the date of this Order and extending 24 months following the later of (a) the date on which this Order becomes final and no longer subject to any appeal or (b) the date on which any other regulatory approvals necessary to issue the subchapter M bonds are obtained and no longer subject to any appeal. However, if there is a severe disruption in the financial markets of the United States at any time during the effective period of this Order, it is also appropriate for the effective period to automatically be extended to a date that is 90 days after the date such disruption ends.

#### IV. Conclusions of Law

The Commission makes the following conclusions of law.

1. ERCOT is an independent organization as defined in PURA § 39.602(3).
2. ERCOT is ~~permitted~~entitled to file an application for a debt obligation order under PURA § 39.603.
3. The Commission has jurisdiction and authority over ERCOT’s application for a debt obligation order under PURA § 39.603.
4. The Commission has authority to approve this Order under subchapter M of PURA chapter 39.

5. Notice of ERCOT's application was provided in compliance with applicable law through ERCOT's standard form of communication with wholesale market participants.
6. Financing the default balance in the manner provided by this Order fulfills the purposes set forth in PURA § 39.601(a) and (b) and serves the public purpose of preserving the integrity of the electricity market in the ERCOT power region under PURA § 39.601(c).
- 6A. The sale of the initial subchapter M bonds to the Comptroller at the interest rates described in this Order is in accordance with subchapter M of PURA chapter 39 and Texas Government Code § 404.0241.
- 6B. This Order does not relieve or excuse any entity from paying amounts that it may owe to ERCOT.
- 6.7. The financing mechanism authorized in this Order—including but not limited to tThe issuance advice letter submission process ~~contemplated~~ set forth in this Order for each series of subchapter M bonds and the findings regarding the Commission's designated representative—satisfies the requirements of PURA § 39.601(e), ~~prescribing that the Commission shall ensure that the structuring and pricing of the Subchapter M Bonds results in the lowest financing costs consistent with market conditions and the terms of this Debt Obligation Order (including, so long as the initial Subchapter M Bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments).~~
8. The financing mechanism ~~contemplated~~ authorized in this Order, including the securitization of default charges and issuance of subchapter M bonds, satisfies the requirements of PURA § 39.603(a) ~~prescribing that the securitization is needed to preserve the integrity of the wholesale market and the public interest.~~
- 8A. The financing mechanism authorized in this Order is needed to preserve the integrity of the wholesale market and the public interest.
- 7.9. This Order adequately details the default balance to be recovered and the period over which ERCOT ~~shall be~~ is permitted to recover nonbypassable default charges in accordance with the requirements of PURA § 39.603(b).



~~8.10.~~ The ~~financing of~~ Upfront costs ~~included in as part of~~ the default balance to be paid from the proceeds of the subchapter M bonds as described in this Order are costs of implementing this Order under PURA § 39.602(1)(C).

~~9.11.~~ The ongoing costs associated with administering subchapter M bonds as described in this Order are necessary and unavoidable costs of financing the subchapter M bonds under PURA, and the payment of ongoing costs from default charges is needed to ensure that the necessary costs to service the subchapter M bonds will be covered.

~~12.~~ The period over which default charges ~~must~~ may be assessed to repay the subchapter M bonds, ~~which may~~ complies with the requirement in not exceed thirty (30) years, as required in in PURA § 39.603(b)(2) that the period not exceed 30 years.

~~12A.~~ Under PURA § 39.603(b)(2), the servicer is not permitted to assess default charges to wholesale market participants after the 30-year period. However, PURA § 39.603(b)(2) does not preclude the servicer from recovering default charges after the 30-year period to the extent the default charges were assessed during the 30-year period but have not yet been recovered. ~~This provision does not preclude the servicer from recovering Default Charges attributable to service rendered during the 30-year period but remaining unpaid at the end of the 30-year period.~~

~~10.13.~~ ~~The provisions of T~~his Debt Obligation Order complies with~~satisfies~~ the requirements of PURA § 39.601(d) ~~prescribing~~ that the proceeds of the subchapter M bonds ~~shall~~ be used solely for the purposes of financing the dDefault bBalances that otherwise would be or have been uplifted to the wholesale market.

~~11.14.~~ Amounts that are required to be paid to the servicer as default charges under this Order are default charges as that term is defined in PURA § 39.602(2).

~~14A.~~ The cap on amounts billed through the default uplift invoice process under ERCOT Protocols § 9.19.1(4) does not apply to the default charges under subchapter M of PURA chapter 39.

~~14B.~~ The cap on amounts billed through the default uplift invoice process under ERCOT Protocols § 9.19.1(4) is not part of the pro rata share methodology discussed in PURA § 39.603(d).

~~12.15.~~ The processes described in this Order pertaining to the assessment and collection of default charges and pertaining to the true-up of default charges satisfy the requirements of PURA § 39.603(d).

~~15A.~~ ~~In keeping with the existing protocols of ERCOT, a~~Any QSE or CRR account holder representing one or more obligated market participants is responsible for paying and settling default charges with ERCOT on behalf of its obligated market participants.

~~15B.~~ Under PURA § 39.603(d), the default charges are to be assessed on all wholesale market participants (except as provided in PURA §§ 39.151(j-1) and 39.603(f)), including on wholesale market participants who are in default but still participating in the wholesale market and wholesale market participants who enter the market after this Order is issued.

~~15C.~~ Under PURA § 39.603(e), not later than the 30th day after the date ERCOT receives a default charge payment from a wholesale market participant, ERCOT is required to remit the payment to the Comptroller toward repayment of subchapter M bonds sold to the Comptroller.

~~15D.~~ Under PURA § 39.603(f), default charges cannot be collected from or allocated to either the City of Lubbock, acting by and through Lubbock Power & Light, or ICE NGX Canada Inc.

~~16.~~ Under PURA § 39.603(i), the subchapter M bonds authorized to be issued under this Order are a nonrecourse debt secured solely by the default charges created by this Order and explicitly assessed to repay the subchapter M bonds (including the default property as well as earnings from the investment and reinvestment of default charges).~~and~~

~~16A.~~ ~~†~~The subchapter M bonds authorized to be issued under this Order and PURA § 39.603 do not create a personal liability for ERCOT.

~~13.17.~~ The mechanisms for the true-up of default charges described in this Order satisfy the requirements of PURA § 39.603(c) and § 39.606.

~~17A.~~ Under PURA § 39.605(1), the imposition and collection of all default charges authorized in this Order are nonbypassable to all QSEs and CRR account holders representing obligated market participants within the ERCOT power region.

17B. This Order satisfies the requirements of PURA § 39.605(2).

~~14.~~18. Under PURA § 39.608(a), the rights and interests of ERCOT or its successor under this Order~~—~~, including the right to impose, collect, and receive the default charges authorized in this Order~~—~~, are assignable and will become default property when they are first transferred to BondCo.

~~15.~~19. The rights, interests, and property conveyed to BondCo in any purchase and sale agreement or related bill of sale~~—~~, including the irrevocable right to impose, collect, and receive default charges and the revenues and collections from default charges~~—~~ are default property within the meaning of that term in PURA § 39.608.

~~16.~~20. Under PURA § 39.608(b), all default property created under this Order constitutes a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of the default charges depends on further acts by ERCOT or others that have not yet occurred.

~~17.~~21. Under PURA § 39.608(c), all revenues and collections resulting from the default charges assessed under this Order will constitute proceeds only of the default property arising from this Order.

~~18.~~22. Upon the transfer by ERCOT of default property to a BondCo, the BondCo will have all of the rights, title, and interest of ERCOT with respect to such default property, including the right to impose, collect, and receive the default charges authorized by this Order.

~~19.~~23. Under PURA § 39.607, ~~the transactions involving the transfer and ownership of default property and the receipt of default charges to BondCo as contemplated described in this Order are exempt from state and local income, sales and use, franchise, and gross receipts taxes, and other taxes or similar charges.~~

~~20.~~24. The holders of the subchapter M bonds and the indenture trustee are each financing parties within the meaning of that term in PURA § 39.609.

~~21.~~25. BondCo is authorized to issue subchapter M bonds in accordance with this Order.

~~22.~~26. The subchapter M bonds issued under this Order are debt obligations within the meaning of that term in PURA § 39.601(a).



26A. ~~and~~ All the protections provided under subchapter M of chapter 39 of PURA ~~the~~ apply to subchapter M bonds and holders thereof of those bonds ~~are entitled to all of the protections provided under Subchapter M of Chapter 39 of PURA.~~

23-27. If and when ERCOT transfers to a BondCo the right to impose, collect, and receive the default charges and to issue the subchapter M bonds, the servicer ~~shall be able to~~ may recover the default charges associated with such default property only for the benefit of BondCo and the holders of the subchapter M bonds in accordance with the servicing agreement.

24-28. As provided by PURA § 39.609, the subchapter M bonds authorized by this Order are not a debt or obligation of the State of Texas and are not a charge on its full faith and credit or taxing power.

29. Through PURA § 39.609, ~~By adopting this Debt Obligation Order Each of the State of Texas and the Commission has lawfully~~ pledged “for the benefit and protection of financing parties and [ERCOT] that it will not take or permit any action that would impair the value of default property, or reduce, alter, or impair the default charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related [subchapter M bonds] have been paid and performed in full.” ~~A~~ BondCo, in issuing subchapter M bonds, is authorized under PURA § 39.609 ~~and this Debt Obligation Order~~ to include this pledge in any documentation relating to the subchapter M bonds.

29A. As a state agency that is a creature of the Legislature, the Commission is bound by the state’s pledge set forth in PURA § 39.609.

25-30. This Order remains in full force and effect and unabated notwithstanding the bankruptcy of ERCOT, its successors, or assignees.

26-31. This Order is an order approving ERCOT’s application for a debt obligation order under PURA § 39.603 and is irrevocable and not subject to reduction, impairment, or adjustment by further action of the Commission, as prescribed by PURA §39.603(g). The finality of this Order is not impaired in any manner by the participation of the Commission through its designated representative in any decisions related to issuance of the subchapter M bonds

or by the Commission's review of, or issuance of an order related to, the issuance advice letter required by this Order to be filed with the Commission.

~~27.32.~~ The default charges authorized in this Order are irrevocable and not subject to reduction, impairment, or adjustment by further action of the Commission, as prescribed by PURA §39.603(g).

~~28.33.~~ This Order is not subject to review or appeal except as expressly permitted under PURA § 39.653(h).

~~33A.~~ ~~and Any~~ review on appeal shall be based solely on the record before the Commission and briefs to the court and shall be limited to whether this Order conforms to the constitution and laws of this State and the United States and is within the authority of the Commission under PURA.

~~34.~~ This Order meets the requirements for a debt obligation order under subchapter M of PURA chapter 39.

~~34A. This Order constitutes Commission approval to refinance under PURA § 39.151(d-2).~~

~~34B. Refinancing a portion or all of any prior series of subchapter M bonds (including the initial subchapter M bonds to be sold to the Comptroller) is in the public interest under PURA § 39.603(g) to the extent that such refinancing is in accordance with this Order and PURA.~~

~~34C. Based on the authorization granted in this Order, ERCOT is not required to apply for a subsequent order for any refinancing of subchapter M bonds or for review and approval under PURA § 39.151(d-2); however, the authority and approval granted in this Order is effective as to any such refinancing upon, but only upon, ERCOT filing with the Commission a separate issuance advice letter for that issuance and demonstrating compliance of that issuance with the provisions of this Order. The Commission has the authority to issue an order finding that the issuance does not comply with the provisions of this Order or PURA.~~

~~35.~~ Under PURA § 39.604(f), effective on the date the first subchapter M bonds are issued under this Order, if any provision in ~~this title or portion of~~ PURA is held to be invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason, that occurrence ~~shall will~~ not affect the validity or continuation of the following, which shall remain in full

force and effect: subchapter M or any other provision of PURA that is relevant to the issuance, administration, payment, retirement, or refunding of the subchapter M bonds or to any actions of ERCOT, its successors, an assignee, a collection agent, or a financing party, ~~which shall remain in full force and effect.~~

35A. Under PURA § 39.608(b), this Order is in effect, and the default property continues to exist, for the same period of time as the State of Texas's pledge set forth in PURA § 39.609.

## V. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

### A. Approval

1. **Approval of Application.** The Commission approves the application of ERCOT for the issuance of a debt obligation order under PURA § 39.603, as modified by this Order.
2. **Default Balance.** The Commission approves the default balance in the amount of up to \$800 million, which must~~to~~ be calculated as provided in this Order. The Commission authorizes securitization of less than \$800 million if the default balance, as calculated in accordance with this Order, is less than \$800 million.
3. **Default Charges.** The Commission approves the assessment and collection of default charges to QSEs and CRR account holders representing the interests of obligated market participants on a pro rata basis as provided in this Order in an amount sufficient to ensure the recovery of amounts expected to be necessary to timely provide all payments of debt service and other required amounts and charges in connection with the subchapter M bonds, as provided in this Order. The initial billing of default charges must commence no sooner than the first month following the initial issuance of subchapter M bonds.
4. **Subchapter M Bonds.** The Commission authorizes ERCOT to issue subchapter M bonds in one or more series. The aggregate principal amount must not exceed the securitizable amount.
5. **Authority to Securitize.** The Commission authorizes ERCOT to securitize default charges corresponding to the securitizable amount, to cause the issuance of subchapter M bonds in an aggregate amount not to exceed the securitizable amount, and to create default

property to be pledged and assigned by ERCOT as collateral and a source of repayment for the subchapter M bonds.

5A. Any subchapter M bonds issued through ERCOT for direct purchase and investment by the Comptroller must bear interest at the rate described in this Order so long as this initial series of subchapter M bonds are outstanding.

6. **Provision of Information.** ERCOT must take all necessary steps to ensure that the Commission or its designated representative is provided sufficient and timely information to allow the Commission or its designated representative to fully participate in and exercise its decision-making authority over the proposed financing as provided in this Order.

7. **Issuance Advice Letter.** For each series of subchapter M bonds issued, ERCOT must file a draft issuance advice letter in the compliance docket for this proceeding not later than two weeks before the expected date of commencement of marketing the subchapter M bonds, other than the series to be sold to the Comptroller. In the case of the series to be sold to the Comptroller, the issuance advice letter ~~must~~may be filed in the compliance docket for this proceeding within two weeks of the sale to the Comptroller of subchapter M bonds. ~~Unless the Commission staff elected to act sooner, within~~Not later than one week after receipt of the draft issuance advice letter, Commission Staff must provide ERCOT comments and recommendations regarding the adequacy of the information provided.

7A. Not later than the end of the first business day after the pricing of the subchapter M bonds and before the issuance of the subchapter M bonds, ERCOT, in consultation with the Commission acting through its designated representative, must file in the compliance docket for this proceeding an issuance advice letter in substantially the same form of the issuance advice letter attached as appendix A to this Order.

7B. As part of the issuance advice letter, ERCOT, through an officer of ERCOT, must provide a certification worded identically to the statement in the form of issuance advice letter attached to this Order as appendix A. ERCOT must complete the issuance advice letter with the actual dollar amount of the default charges and other information specific to the subchapter M bonds to be issued, and ERCOT must certify to the Commission that the structure and pricing of that series results in the lowest financing costs consistent with market conditions and the terms set out in this Order (including, so long as the initial

subchapter M bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments).

7C. In addition, if original issue discount, additional credit enhancements, or arrangements to enhance marketability are used, the issuance advice letter must include certification that the original issue discount, additional credit enhancements, or other arrangements are reasonably expected to provide benefits greater than their costs ~~as required by this Debt Obligation Order.~~

7D. All amounts in the issuance advice letter ~~which that~~ require computation must be computed using the mathematical formulas contained in the form of the issuance advice letter in appendix A to this Order. Electronic spreadsheets with the formulas supporting the schedules contained in the issuance advice letter must be included with such a letter. The Commission's review of the issuance advice letter will be limited to compliance with PURA, this Debt Obligation Order, and the specific requirements that are contained in the issuance advice letter.

7E. The initial default charges and the final terms of the subchapter M bonds set forth in the issuance advice letter ~~shall become~~ are effective on the date of issuance of the subchapter M bonds. ~~(which shall- The issuance of the subchapter M bonds must not occur before the fifth business day after pricing)- unless prior to~~ In addition, the issuance of the subchapter M bonds must not occur if, before noon on the fourth business day after pricing, the Commission issues an order finding that the proposed issuance does not comply with PURA or the requirements set forth above in this Ordering Paragraph in this Order.

7F. As a condition to accepting any issuance advice letter relating to any issuance of subchapter M bonds in a public or private offering, the Commission may require documentation, opinions, or other assurances as may be reasonably necessary to ensure that the applicable capitalization requirements have been met.

## **B. Default Charges**

8. **Imposition and Collection.** The Commission authorizes ERCOT to impose default charges on, and authorizes the servicer to assess and collect default charges from, all QSEs and CRR account holders representing obligated market participants, in accordance with

the procedures described in this Order. ERCOT must develop and adopt new Protocol provisions governing the assessment and collection of default charges in accordance with this Order and PURA.

9. **Default Charge Remittance Procedures.** Default charges must be billed to and collected from QSEs and CRR account holders representing one or more obligated market participants in accordance with ERCOT's existing Protocols, ~~and~~ as in the manner described in this Order. Default charges must be assessed on all wholesale market participants (except as provided in PURA §§ 39.151(j-1) and 39.603(f)), including on wholesale market participants who are in default but still participating in the wholesale market and wholesale market participants who enter the market after this Order is issued. Default charges must not be billed to the City of Lubbock, acting by and through Lubbock Power & Light, or to ICE NGX Canada Inc.
10. **Collector of Default Charges.** ~~ERCOT or any subsequent~~ The servicer of the subchapter M bonds must bill a wholesale market participant or other entity ~~which, under the terms of this Debt Obligation Order, that~~ is required to remit default charges, for the default charges attributable to that wholesale market participant.
11. **Collection Period.** The default charges related to a series of subchapter M bonds must be designed to be collected over the scheduled life of the subchapter M bonds, and the scheduled life of the subchapter M bonds ~~which must~~ not exceed 30 years from the date of issuance of the first series of subchapter M bonds. ~~However, amounts remaining unpaid after this 30-year period may be recovered but only to the extent~~ However, the Commission authorizes the servicer to recover default charges after the 30-year period to the extent the default charges were assessed during the 30-year period but have not yet been recovered. ~~that the charges are attributable to Default Charges allocable to the 30-year period.~~
12. **Allocation.** ERCOT must allocate the default charges to each QSE and CRR account holder that represents one or more obligated market participants based on the pro rata share of the obligated market participants represented by the QSE and CRR account holder, as described in this Order ~~Finding of Fact Paragraphs 53 through 63 of this Debt Obligation Order.~~



13. **Nonbypassability.** The imposition and collection of all default charges authorized in this Order must be nonbypassable to all QSEs and CRR account holders representing obligated market participants within the ERCOT power region. All QSEs and CRR account holders must remit the default charges collected from its obligated market participants. All QSEs and CRR account holders must pay default charges on behalf of its obligated LSEs whose interests they represent.

14A. Each QSE or CRR account holder that is responsible for one or more obligated market participants must post collateral equal to four months of estimated default charges.

~~13.14.~~ **Rights and Remedies.** The Commission authorizes ~~ERCOT (or any successor the servicer)~~ to exercise all of the rights, remedies, and other methods for pursuing collection of default charges from QSEs, CRR account holders, and obligated market participants described in ~~Finding of Fact Paragraph 55 of~~ this Order. ERCOT or any subsequent holder of the default property ~~shall be~~ is entitled to exercise any such remedies and take any action in accordance with PURA, the Commission's substantive rules, a Commission Order, or the ERCOT Protocols then in effect.

15. **True-Ups.** True-ups of the default charges must be undertaken and conducted in accordance with the mechanisms described in this Order. If subchapter M bonds are issued in more than one series, then each series must be subject to separate true-up adjustments. However, more than one series may be trued-up in a single proceeding.

15A. All true-up reports and filings must be filed in the compliance docket for this proceeding.

### C. Subchapter M Bonds

~~14.16.~~ **Issuance.** The Commission authorizes ERCOT through one or more BondCos to issue one or more series of subchapter M bonds in an aggregate principal amount not to exceed the securitizable amount, as specified in this Order. The subchapter M bonds must be denominated in United States dollars.

~~15.17.~~ **Upfront Costs.** The Commission authorizes ERCOT to finance ~~and pay for~~ its upfront costs as part of the securitizable amount and to pay its upfront costs from the proceeds of the subchapter M bonds in the manner accordance with the terms of this Debt Obligation Order. ~~The Upfront Costs are more fully described in Findings of Fact Paragraph 13 of~~



this ~~Debt Obligation~~ Order. ~~No individual cap shall apply to any component of the Upfront Costs.~~

~~16.18.~~ **Ongoing Costs.** The Commission authorizes ERCOT to recover its actual ongoing costs through its default charges in accordance with the terms of this Order.

~~17.19.~~ **Refinancing.** The Commission authorizes ERCOT to refinance a portion or all of any prior series of subchapter M bonds, including the initial subchapter M bonds to be sold to the Comptroller. ~~This Debt Obligation Order constitutes Commission approval to refinance under PURA § 39.151(d-2).~~ Any such refinancing bonds may be offered for sale in public or private markets consistent with market conditions that will result in the lowest financing cost consistent with then market conditions and the terms of this Order. ERCOT is not required to apply for a subsequent order for any refinancing of subchapter M bonds; however, the authority and approval granted in this Order is effective as to any such refinancing upon, but only upon, ERCOT filing with the Commission a separate issuance advice letter for that issuance demonstrating compliance of that issuance with the provisions of this Order, subject to the Commission's authority to issue an order finding that the issuance does not comply with the provisions of this Order or PURA.

~~18.20.~~ **Collateral.** All default property must be held and administered by the indenture trustee pursuant to the indenture as described in ERCOT's application. BondCo must establish a collection account with the indenture trustee as described in ~~this Ordere application and Findings of Fact Paragraphs 45 through 49 of this Debt Obligation Order.~~ Upon payment of the principal amount of all subchapter M bonds authorized in this Order and the discharge of all obligations in respect thereof, all amounts in the collection account, including investment earnings, must be released by the indenture trustee to BondCo for distribution in accordance with this Order. Within 30 days after the date that these funds are eligible to be released, ERCOT must notify the Commission ~~within thirty (30) days after the date that these funds are eligible to be released~~ of the amount of such funds available for crediting to the benefit of wholesale market participants.

~~19.21.~~ **Distribution Following Repayment.** Following repayment of the subchapter M bonds authorized in this Order and release of the funds held by the indenture trustee, the administrator, ~~on behalf of BondCo,~~ must distribute to ERCOT, on behalf of BondCo the

final balance of the general subaccount, excess funds subaccount, and all other subaccounts, whether such balance is attributable to principal amounts deposited in ~~such~~ those subaccounts or to interest ~~thereon~~ on the principal amounts, remaining after all other default balance amounts have been paid. The amounts distributed to ERCOT must be credited against future obligations of each obligated market participant that paid default charges during the last 12 months that the default charges were in effect. BondCo or its successor in interest to the default property must, to the extent the supplemental capital subaccount is not depleted below its original amount, also credit against future obligations of obligated market participants any subsequently collected default charges. The amount paid to each wholesale market participant must be determined by multiplying the total amount available for distribution by a fraction, the numerator of which is the total default charges paid by the wholesale market participant during the last 12 months default charges were in effect and the denominator of which is the total default charges paid by all QSEs and CRR account holders representing obligated market participants during the last 12 months the default charges were in effect.

~~20-22.~~ **Funding of Capital and any Supplemental Capital Subaccount.** The initial capital contribution by ERCOT must be made into BondCo, must not be deposited with the indenture trustee, and must be funded by ERCOT and not from the proceeds of the sale of subchapter M bonds. Such initial equity capital ~~may~~ must be contributed either at the issuance of each series of subchapter M bonds or, consistent with applicable tax and securities laws and regulations, as supplemental capital periodically during the term of each series of subchapter M bonds. Upon payment of the principal amount of all subchapter M bonds and the discharge of all obligations in respect thereof, all amounts of equity capital contributed by ERCOT, including investment earnings, must be available for distribution by BondCo to ERCOT.

22A. Any supplemental capital later contributed, including that contributed consistent with applicable tax and securities laws, either must ~~may~~ be ~~either~~ equity capital of ERCOT contributed to BondCo and not serve as collateral for subchapter M bonds, or must ~~may~~ be funded from default charges retained by the indenture trustee and deposited into the supplemental capital subaccount to be held by the indenture trustee as collateral for the

subchapter M bonds. Supplemental capital ~~may~~must be contributed either at the issuance of a series of subchapter M bonds or periodically during the term of a series of subchapter M bonds consistent with applicable tax and securities laws. Upon payment of all principal amounts of all subchapter M bonds and the discharge of all obligations with respect thereof, all amounts in the supplemental capital subaccount, including investment earnings, must be released to BondCo for payment to ERCOT. Funds in the supplemental capital subaccount may be released earlier to ERCOT in accordance with the terms of the indenture. Amounts equal to funds in the supplemental capital subaccount released to ERCOT for the benefit of BondCo must be credited by ERCOT to wholesale market participants consistent with ~~Ordering Paragraph No. 21~~ of this Order.

~~21-23.~~ **Original Issue Discount; Credit Enhancement.** The Commission authorizes ERCOT to provide original issue discount or provide for various forms of credit enhancement, including letters of credit, an overcollateralization subaccount or other reserve accounts, surety bonds, and other mechanisms designed to promote the credit quality or marketability of the subchapter M bonds to the extent not prohibited by this Order. The decision to use such arrangements to enhance credit or promote marketability must be made in conjunction with the Commission acting through its designated representative. The Commission prohibits ERCOT from entering into an interest rate swap, currency hedge, or interest rate hedging arrangement. The Commission authorizes ERCOT to include the costs of original issue discount, credit enhancements, or other arrangements to promote credit quality or marketability as upfront costs or ongoing costs (as appropriate) only if ERCOT certifies that such arrangements are reasonably expected to provide benefits greater than their cost and such certifications are agreed with by the Commission's designated representative. ERCOT is not required to enter any arrangements to promote credit quality or marketability unless all related costs and liabilities can be included in upfront costs or ongoing costs (as appropriate). ERCOT and the Commission's designated representative must evaluate the relative benefits of the arrangements in the same way that benefits are quantified under the quantifiable benefits test. This ordering paragraph does not apply to the collection account or its subaccounts described in the final issuance advice letter.

~~22-24.~~ **Life of Bonds.** The legal final maturity of the subchapter M bonds authorized by this Order must not exceed 30 years.

~~23-25.~~ **Amortization Schedule.** The Commission approves, and the subchapter M bonds must be structured to provide, default charges that are designed to produce substantially level annual debt service over the respective expected interest and amortization periods of the subchapter M bonds, as described in a final issuance advice letter, and utilize consistent allocation factors, subject to modification in accordance with the true-up mechanisms adopted in this Order.

~~24-26.~~ **Commission Participation in Bond Issuance.** The Commission, acting through its designated representative, must participate directly with ERCOT in negotiations regarding the structuring, pricing, and marketing of the subchapter M bonds, and must have equal rights with ERCOT to approve or disapprove the proposed structuring, pricing, and marketing of the subchapter M bonds. The Commission's designated representative must have the right to participate fully and in advance regarding all aspects of the structuring, pricing, and marketing of the subchapter M bonds—and all parties must be notified of the designated representative's role—and must be provided timely information that is necessary to fulfill its obligation to the Commission. The Commission directs its designated representative to advise the Commission of any proposal that does not comply in any material respect with the criteria established in this Order and to promptly inform ERCOT and the Commission of any items that, in the designated representative's opinion, are not reasonable. ~~Although this Debt Obligation Order is written in the context of an underwritten offering, n~~Nothing herein in this Order shall be construed to preclude issuance of the subchapter M bonds through a competitive bid offering or private placement if ERCOT and the Commission's designated representative agree that ERCOT should do so. The Commission's designated representative must notify ERCOT and the Commission no later than 12:00 p.m. on the business day after the Commission's receipt of the issuance advice letter for each series of subchapter M bonds whether the structuring, marketing, and pricing of that series of subchapter M bonds comply with the criteria established in this Order.

25-27. **Use of BondCo.** ERCOT must use BondCo, a special purpose entity as ~~proposed in its application described in this Order,~~ in conjunction with the issuance of a series of subchapter M bonds authorized under this Order. BondCo must be funded with an amount of capital that is sufficient for BondCo to carry out its intended functions and to avoid the possibility that ERCOT would have to extend funds to BondCo in a manner that could jeopardize the bankruptcy remoteness of BondCo. The Commission authorizes ERCOT to create more than one BondCo, and if ERCOT does so, the rights, structure, and restrictions described in this Order with respect to BondCo apply to each purchaser of default property to the extent of the default property sold to it and the subchapter M bonds issued by it.

~~26-28. **DELETED Pledge of the State.** Each of the State of Texas and the Commission pledges for the benefit and protection of all financing parties and ERCOT, that it shall not take or permit any action that would impair the value of Default Property, or reduce, alter, or impair the Default Charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related Subchapter M Bonds have been paid and performed in full. A BondCo, in issuing Subchapter M Bonds, is authorized pursuant to PURA § 39.663 and this Debt Obligation Order to include this pledge in any documentation relating to the Subchapter M Bonds.~~

~~27-29. **DELETED Limitation on ERCOT's Liability.** The Subchapter M Bonds authorized to be issued pursuant to this Debt Obligation Order and PURA § 39.603 are a nonrecourse debt to ERCOT, secured solely by the Default Charges created by this Debt Obligation Order (including the Default Charges explicitly assessed to repay the Subchapter M Bonds), and the Subchapter M Bonds shall not create a personal liability for ERCOT.~~

#### **D. Servicing**

30. **Servicing Agreement.** The Commission authorizes ERCOT to enter into the servicing agreement with BondCo and to perform the servicing duties approved in this Order. Without limiting the foregoing, in ERCOT's capacity as initial servicer of the default property, the Commission authorizes ERCOT to calculate, bill, and collect for the account of BondCo the default charges initially authorized in this Order, as adjusted from time to time to meet the periodic payment requirements as provided in this Order and to make such

filings and take such other actions as are required or permitted by this Order in connection with the true-ups described in this Order. The Commission authorizes the servicer to collect servicing fees in accordance with the provisions of the servicing agreement, provided that the annual servicing fee payable to ERCOT while it is serving as servicer (or to any other servicer affiliated with ERCOT) ~~shall~~ does not at any time exceed the amount described in the applicable issuance advice letter. The servicing agreement must also include a provision that ERCOT will indemnify the Commission in connection with any increase in servicing fees that become payable as a result of a default resulting from ERCOT's willful misconduct, bad faith, or negligence in performance of its duties or observance of its covenants under the servicing agreement. ~~The indemnity shall be enforced by the Commission but shall not be enforceable by any other market participant.~~

30A. BondCo must file in the compliance docket of this proceeding any servicing agreement discussed in this Order and any amendment to such an agreement.

28-31. Administration Agreement. The Commission authorizes ERCOT to enter into an administration agreement with each BondCo to provide services relating to the administration of the subchapter M bonds. The fee charged by ERCOT as administrator under that agreement must not exceed the amount described in the applicable issuance advice letter, plus reimbursable third-party costs.

29-32. Replacement of ERCOT as Servicer. Upon the occurrence of an event of default under the servicing agreement relating to the servicer's performance of its servicing functions with respect to the default charges, the Commission authorizes the financing parties to seek to replace ERCOT as the servicer in accordance with the terms of the servicing agreement. If the servicing fee of the replacement servicer exceeds the amount described in the applicable issuance advice letter, the replacement servicer must not begin providing service until (a) the date the Commission approves the appointment of such replacement servicer or (b) if the Commission does not act to either approve or disapprove the appointment, the date that is 45 days after notice of appointment of the replacement servicer is provided to the Commission. However, No ~~no~~ entity may replace ERCOT as the servicer in any of its servicing functions with respect to the default charges and the default property authorized



by this Order; if the replacement would cause any of the then current credit ratings of the subchapter M bonds to be suspended, withdrawn, or downgraded.

33. **Amendment of Agreements.** ~~The parties~~Any amendment to the servicing agreement, administration agreement, indenture, ~~and or~~ default property sale or assignment agreement ~~may amend the terms of such agreements; provided, however, that no amendment to any such agreement shall~~must not increase the ongoing costs without the Commission's approval ~~of the Commission.~~ Commission authorization is not required for ~~A~~any amendment that does not increase the ongoing costs ~~shall be effective without prior Commission authorization.~~ If~~Any an~~ amendment to any such agreement ~~that~~ may have the effect of increasing ongoing costs, BondCo must file the proposed amendment in the compliance docket for this proceeding along with a statement as to the possible effect of the amendment on the ongoing costs, and the Commission will have thirty days to disapprove the amendment. If the Commission does not disapprove the amendment, ~~The~~ amendment ~~is~~shall become effective on the later of (a) the date proposed by the parties to the amendment or (b) 31 days after such submission to the Commission ~~unless the Commission issues an order disapproving the amendment within a 30-day period.~~

~~30.~~34. **Collection Terms.** The servicer must remit collections of the default charges to BondCo or the indenture trustee for BondCo's account in accordance with the terms of the servicing agreement.

#### **E. Structure of the Securitization**

~~31.~~35. **Structure.** ERCOT must structure the financing as proposed in ERCOT's application and described in this Order.

#### **F. Use of Proceeds**

~~32.~~36. **Use of Proceeds.** Upon the issuance of subchapter M bonds, BondCo must pay the net proceeds from the sale of the subchapter M bonds after payment of upfront costs to ERCOT for the recovery of unpaid defaulted amounts and revenue auction receipts in accordance with the provisions of this Order and subchapter M of PURA chapter 39.

**G. Miscellaneous Provisions**

~~33.37. Continuing Issuance Right~~**Limitation of Authorization.** The Commission limits the authorization granted by this Order for ERCOT ~~has the continuing irrevocable right to~~ cause the issuance of subchapter M bonds in one or more series in accordance with this Order ~~for to~~ a period commencing with the date of this Order and extending 24 months following the later of (a) the date on which this Order becomes final and no longer subject to any appeal or (b) the date on which any other regulatory approvals necessary to issue the subchapter M bonds are obtained and no longer subject to any appeal. However, if at any time during the effective period of this Order there is a severe disruption in the financial markets of the United States, the effective period ~~shall is~~ automatically ~~be~~ extended to a date ~~which is not less than that is~~ 90 days after the date such disruption ends.

~~34.38. Internal Revenue Service Private Letter or Other Rulings.~~ ERCOT is not required by this Debt Obligation Order to obtain a ruling from the IRS; however, ERCOT must obtain either a United States Internal Revenue Service (IRS) ruling (e.g., a private letter ruling) or an opinion of tax counsel sufficient to support the issuance of the bonds to issue the subchapter M bonds. If ERCOT elects to do so obtains a ruling from the IRS with respect to the proposed transaction, the subchapter M bonds, or any other related matter, then upon receipt, ERCOT must promptly file a copy of each such private letter or other ruling issued by the IRS ~~with respect to the proposed transaction, the Subchapter M Bonds or any other matter related there~~ in the compliance docket for this proceeding. ERCOT must also include a copy of every such ruling by the IRS it has received as an attachment to each issuance advice letter required to be filed by this Order. ~~ERCOT may cause Subchapter M Bonds to be issued without a private letter ruling if it obtains an opinion of tax counsel sufficient to support the issuance of the bonds.~~

~~35.39. Binding on Successors.~~ This Debt Obligation Order, together with the Default Charges authorized in it, shall be binding on ERCOT and any successor to ERCOT. This Debt Obligation Order is also binding on and any other entity responsible for billing and collecting default charges on behalf of BondCo, ~~and any successor to the Commission must comply with this Order.~~ In this paragraph, a successor means any entity that succeeds by any means whatsoever to any interest or obligation of its predecessor or transferor, including by way of bankruptcy, reorganization or other insolvency proceeding, merger,



division, consolidation, conversion, assignment, sale, transfer, lease, management contract, pledge or other security, by operation of law or otherwise.

~~36-40.~~ **Flexibility.** Subject to compliance with the requirements of this Order (including, so long as the initial subchapter M bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments), the Commission grants ERCOT and BondCo 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, optional early redemption rights, mandatory early redemption obligations, 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.

~~37-41.~~ **Effectiveness of Order.** This Order is effective upon issuance and is not subject to rehearing by the Commission. Notwithstanding the foregoing, ~~no~~ ~~Default~~ property must not be created under this Order—and ERCOT ~~is~~ ~~shall~~ not be authorized to impose, collect, and receive default charges—until ~~concurrently with~~ the transfer of ERCOT's rights under this Order to BondCo in conjunction with the issuance of the subchapter M bonds.

~~38-42.~~ **Regulatory Approvals.** All regulatory approvals within the jurisdiction of the Commission that are necessary for the financing of the default charges associated with the default balance that is the subject of the application, and all related transactions contemplated in the application, are granted.

~~39-43.~~ **Effect.** ~~This Debt Obligation Order constitutes a legal Debt Obligation Order for ERCOT under Subchapter M. The Commission finds this Debt Obligation Order complies with the provisions of Subchapter M. This Debt Obligation Order gives rise to rights, interests, obligations and duties as expressed in Subchapter M. It is the Commission's express intent to give rise to those rights, interests, obligations and duties by issuing this Debt Obligation Order.—ERCOT and the servicer must take all actions as are required to effectuate the transactions approved in this Order, subject to compliance with the criteria established in this Order.~~

- ~~44. DELETED. Further Commission Action.~~ The Commission guarantees that it shall act pursuant to this Debt Obligation Order as expressly authorized by PURA to ensure that expected Default Charge revenues are sufficient to pay on a timely basis scheduled principal and interest on the Subchapter M Bonds issued pursuant to this Debt Obligation Order and other costs, including fees and expenses, in connection with the Subchapter M Bonds.
45. Safeguards in the Protocols. To the extent necessary to prevent wholesale market participants from engaging in behavior designed to avoid default charges, including leaving and reentering the market, ERCOT must develop and adopt new Protocol provisions.
- 45A. ERCOT must develop and adopt new Protocol provisions to the extent necessary to implement this Order.
- 45B. To the extent that the financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants are not replenished through the securitization authorized in this Order, ERCOT must file in the compliance docket for this proceeding a plan for full replenishment.
- 45C. Unless otherwise specified, all filings required under this Order must be filed in the compliance docket for this proceeding, Docket No. XXXXX, Style.
- ~~40:46.~~ **All Other Motions, etc., Denied.** The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the \_\_\_\_\_ day of October 2021.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**WILL MCADAMS, COMMISSIONER**

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**LORI COBOS, COMMISSIONER**

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**JIMMY GLOTFELTY, COMMISSIONER**

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**DOCKET NO. 52321**

<b>APPLICATION OF 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 PURSUANT TO CHAPTER 39,</b>	<b>§</b>	
<b>SUBCHAPTER M, OF THE PUBLIC</b>	<b>§</b>	
<b>UTILITY REGULATORY ACT</b>	<b>§</b>	

**DRAFT DEBT OBLIGATION ORDER (CLEAN)**

This Order addresses the application of Electric Reliability Council of Texas, Inc. (ERCOT) under subchapter M of chapter 39 of the Public Utility Regulatory Act (PURA),<sup>1</sup> for approval of the following: (1) the default balance (as defined in PURA § 39.602(1)) in an aggregate amount of up to \$800 million, (2) the assessment of default charges (as defined in PURA § 39.602(2)) to all wholesale market participants except those expressly exempted by PURA for the payment of the default balance, (3) the debt obligation financing structure that ERCOT proposed in its application for the financing of the default balance, and (4) the securitization of default charges and the creation of default property to be pledged and assigned by ERCOT as collateral or sold and transferred in connection with the approved financing structure.

In its application filed with the Commission on July 16, 2021, ERCOT seeks Commission approval to finance a default balance in the amount of up to \$800 million. Accordingly, the Commission

- (1) approves the default balance in an aggregate amount of up to \$800 million, to be calculated as provided in this Order;
- (2) approves the assessment of default charges to all wholesale market participants, except those expressly exempted by PURA, in an amount sufficient to ensure the recovery of amounts expected to be necessary to timely provide all payments of debt service and other required amounts and charges in connection with the subchapter M bonds, as provided in this Order;

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<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code §§ 11.001–66.016.

- (3) authorizes, subject to the terms of this Order, the issuance of debt obligations (referred to in this Order as subchapter M bonds) in one or more series in an aggregate amount of up to \$800 million for the payment of the default balance; and
- (4) approves the financing or securitization of default charges and the creation of default property.

As provided in PURA § 39.603(a), in order to approve the financing or securitization of the default charges, the Commission must find that the issuance of subchapter M bonds is “needed to preserve the integrity of the wholesale market and the public interest, after considering (1) the need to timely replenish financial revenue auction receipts used by [ERCOT] to reduce amounts short-paid to wholesale market participants, (2) the interests of wholesale market participants that are owed balances, and (3) the potential effects of defaulting those balances to the wholesale market without a financing vehicle.”

ERCOT submitted evidence that the proposed securitization or financing will preserve the integrity of the wholesale market and the public interest by (1) allowing wholesale market participants that are owed money to be paid in a more timely manner, (2) promptly replenishing financial revenue auction receipts temporarily used by ERCOT to reduce the amounts related to winter storm Uri that were short-paid to wholesale market participants, and (3) allowing the wholesale market to pay the default balance over a much shorter time period.<sup>2</sup> Based on the evidence presented, the issuance of subchapter M bonds will preserve the integrity of the wholesale market and support the continued delivery of electricity to serve approximately 26 million Texas customers and the public interest generally.

ERCOT provided a general description of the proposed transaction structure in its application and in the testimony and exhibits submitted in support of its application. The proposed transaction structure does not contain every relevant detail and, in certain places, uses only approximations of certain costs and requirements. The final transaction structure will depend, in part, on (1) the requirements of the Texas Comptroller of Public Accounts (the Comptroller), which is required by law to invest in the subchapter M bonds and (2) the market conditions existing

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<sup>2</sup> ERCOT Ex. 2 (Ögelman Direct) at 27-28.

at the time of any refinancing of the subchapter M bonds through a subsequent public or private offering.

In view of these obligations, the Commission establishes certain criteria in this Order that must be met for the approvals and authorizations granted in this Order to become effective. This Order authorizes ERCOT to cause the issuance of subchapter M bonds and to impose, collect, and receive default charges, but only if the final structure of the financing or securitization transaction complies in all material respects with these criteria. ERCOT's compliance with these criteria with respect to each issuance of subchapter M bonds will be evidenced by ERCOT filing with the Commission an issuance advice letter, as provided in this Order. If market conditions make it desirable to issue subchapter M bonds in more than one series (including for the refinancing of previously issued subchapter M bonds), then the authorizations and approvals granted in this Order are effective as to each issuance upon, but only upon, ERCOT's filing with the Commission a separate issuance advice letter for that issuance demonstrating compliance of that issuance with the provisions of this Order.

### **I. Discussion and Statutory Overview**

In February 2021, winter storm Uri resulted in outages at many of the generating resources within the ERCOT region and the demand for power exceeded supply for several days during the storm.<sup>3</sup> These conditions required that the load be involuntarily shed to protect the integrity of the ERCOT transmission grid, and many Texans lost power for extended periods during the storm.<sup>4</sup> The resulting scarcity raised prices in the wholesale electricity market, which caused some wholesale market participants to default on their payment obligations to ERCOT for power under the ERCOT Protocols.<sup>5</sup> As a result of these payment defaults, ERCOT was unable to fully pay certain wholesale market participants who were due payments from ERCOT for the power they produced during the storm.<sup>6</sup>

To address these problems, the Texas Legislature during the 87th legislative session enacted two bills that authorized financing mechanisms to provide funds to help ERCOT and

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<sup>3</sup> ERCOT Ex. 2 (Ögelman Direct) at 19.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 20.

<sup>6</sup> *Id.* at 21-22.

market participants meet their obligations. One bill added subchapters M and N to chapter 39 of PURA, and each provided authority for a financing mechanism to address different aspects of the financial problem.<sup>7</sup> The other bill added subchapter D to chapter 41 of PURA to provide a financial mechanism for electric cooperatives to address the cooperatives' extraordinary costs.<sup>8</sup> The Commission concludes that all of the mechanisms authorized by these two bills must be considered together to have a proper understanding of these mechanisms and the goals of the Legislature in authorizing these mechanisms. The Commission further concludes that the mechanisms authorized by these two bills must be considered together to decide whether the standards set out in subchapter M of chapter 39 have been met.

House Bill 4492 (HB 4492) authorized ERCOT, under subchapter M of PURA chapter 39, to apply to the Commission for the establishment of a debt financing mechanism to finance the default balance arising from winter storm Uri.<sup>9</sup> The term *default balance* is defined as “an amount of money of not more than \$800 million that includes only (1) amounts owed to [ERCOT] by competitive wholesale market participants from the period [beginning 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20, 2021 (the period of emergency)] 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 under [PURA §§ 39.603 and 39.604], including the cost of retiring or refunding existing debt” owed by ERCOT.<sup>10</sup>

The use of a debt financing mechanism will enable wholesale market participants that are owed money to be paid in a more timely manner, replenish financial revenue auction receipts temporarily used by ERCOT to reduce the amounts related to winter storm Uri that were short-paid to the wholesale market participants, and allow the wholesale market to repay the default balance over time.

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<sup>7</sup> Act of May 30, 2021, 87th Leg., R.S., ch. 908 (HB 4492), §§ 2-5, 2021 Tex. Gen. Laws \_\_\_\_ (codified at PURA §§ 39.601–.609 (subchapter M) and PURA §§ 39.651–.664 (subchapter N)).

<sup>8</sup> Act of May 28, 2021, 87th Leg., R.S. §§ 1-3, 2021 Tex. Gen. Laws \_\_\_\_ (codified at PURA §§ 41.151–.163).

<sup>9</sup> PURA § 39.603(a)

<sup>10</sup> PURA § 39.602(1).

The Legislature provided this option for recovering the default balance based on its conclusion that such a financing serves the public purpose of preserving the integrity of the electricity market in the ERCOT region, which serves approximately 26 million Texas customers.<sup>11</sup> As a precondition to the financing, the Legislature required the Commission to find that the issuance of subchapter M bonds is “needed to preserve the integrity of the wholesale market and the public interest,” including approximately 26 million Texas customers, “after considering (1) the need to timely replenish financial revenue auction receipts used by [ERCOT] to reduce amounts short-paid to wholesale market participants; (2) the interests of wholesale market participants that are owed balances; and (3) the potential effects of uplifting those balances to the wholesale market without a financing vehicle.”<sup>12</sup>

HB 4492 also amended § 404.0241 of the Texas Government Code to require the Comptroller to “invest not more than \$800 million of the economic stabilization fund balance to finance the default balance. . . .”<sup>13</sup> “The interest rate charged in connection with the [investment made by the Comptroller] must be calculated by adding the rate determined by the Municipal Market Data Municipal Electric Index, as published by Refinitiv TM3, based on the credit rating of [ERCOT . . .], plus [2.5%].”<sup>14</sup> “The term of the debt obligations may not exceed 30 years.”<sup>15</sup>

The Comptroller is required to manage the investment described above “as a separate investment portfolio” and is required to “provide separate accounting and reporting for the investments in that portfolio.”<sup>16</sup> The Comptroller is also required to “credit to that portfolio all payments, distributions, interest, and other earnings on the investments in that portfolio.”<sup>17</sup> “The [C]omptroller has any power necessary to accomplish the purposes of managing and investing the assets of the portfolio described [above].”<sup>18</sup> “In managing the assets of that portfolio, through procedures and subject to restrictions the [C]omptroller considers appropriate, the [C]omptroller

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<sup>11</sup> PURA § 39.601(c).

<sup>12</sup> PURA § 39.603(a).

<sup>13</sup> Tex. Gov’t Code § 404.0241(b-1).

<sup>14</sup> Tex. Gov’t Code § 404.0241(b-1).

<sup>15</sup> Tex. Gov’t Code § 404.0241(b-1).

<sup>16</sup> Tex. Gov’t Code § 404.0241(b-4).

<sup>17</sup> Tex. Gov’t Code § 404.0241(b-4).

<sup>18</sup> Tex. Gov’t Code § 404.0241(b-5).



may acquire, sell, transfer, or otherwise assign the investments as appropriate, taking into consideration the purposes, terms, distribution requirements, and other circumstances of that portfolio then prevailing.”<sup>19</sup>

The amendment to § 404.0241 of the Texas Government Code, provided for in HB 4492, also provides that “[a] person may not bring a civil action against this state, the Texas Treasury Safekeeping Trust Company, or an employee, independent contractor, or official of this state, including the [C]omptroller, for any claim, including breach of fiduciary duty or violation of any constitutional, statutory, or regulatory requirement, in connection with any action, inaction, decision, divestment, investment, report, or other determination made or taken in connection with subsections (b-1), (b-4), and (b-5).”<sup>20</sup> A person who brings an action described is “liable to the defendant for the defendant’s costs and attorney’s fees resulting from the action.”<sup>21</sup>

To enable ERCOT to finance the default balance, the Commission may approve a debt obligation order in accordance with PURA § 39.603(a). ERCOT requested that the Commission issue a debt obligation order authorizing ERCOT to issue evidences of indebtedness or ownership, that are issued under a debt obligation order, that are secured and payable from default charges, and authorized for the public purpose of preserving the integrity of the electricity market in the ERCOT region. The term *default charges* is defined in subchapter M as “charges assessed to wholesale market participants to repay amounts financed under [subchapter M] to pay the default balance.”<sup>22</sup>

If subchapter M bonds are approved by the Commission and issued through ERCOT, wholesale market participants are required to pay the principal, interest, and related charges of the subchapter M bonds, as components of the default balance, through default charges. Default charges are nonbypassable charges to be assessed to 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,” and as further provided in this Order.<sup>23</sup>

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<sup>19</sup> Tex. Gov’t Code § 404.0241(b-5).

<sup>20</sup> Tex. Gov’t Code § 404.0241(b-2).

<sup>21</sup> Tex. Gov’t Code § 404.0241(b-3).

<sup>22</sup> PURA § 39.602(2).

<sup>23</sup> PURA §§ 39.603(d), 39.605(1).

Under PURA § 39.603(b)(2), “the period over which the default charges must be assessed to repay the debt obligations . . . may not exceed 30 years.” The Commission concludes that this provision prevents the assessment of default charges to wholesale market participants after the 30-year period, but it does not prohibit recovery of default charges after the 30-year period to the extent the default charges were assessed during the 30-year period but have not yet been recovered.

PURA requires the Commission and ERCOT to “pursue collection in full of amounts owed to [ERCOT] by any market participant to reduce the costs that would otherwise be borne by other market participants or their customers.”<sup>24</sup> Under PURA § 39.603(d), default charges are required to “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 [this Order] is issued,” and “may be based on periodically updated transaction data to prevent market participants from engaging in behavior designed to avoid the default charges.”<sup>25</sup> Notwithstanding the foregoing, “default charges may not be collected from or allocated to a market participant that (1) otherwise would be subject to a default charge solely as a result of acting as a central counterparty clearinghouse in wholesale market transactions in the ERCOT power region, and (2) is regulated as a derivatives clearing organization, as defined by [section 1a of the Commodity Exchange Act (7 U.S.C. § 1a)].”<sup>26</sup> In addition, “[ERCOT] may not reduce payments to or uplift short-paid amounts to a municipally owned utility that becomes subject to the jurisdiction of [ERCOT] 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.”<sup>27</sup>

PURA provides that ERCOT must assess the default charges;<sup>28</sup> however, the rights and interest of ERCOT to “impose, collect, and receive default charges” may be assigned or pledged to a successor under a debt obligation order in connection with the issuance of subchapter M bonds.<sup>29</sup> Such rights become “contract rights until they are first transferred to an assignee or

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<sup>24</sup> PURA § 39.159(c).

<sup>25</sup> PURA § 39.603(d).

<sup>26</sup> PURA § 39.603(f).

<sup>27</sup> PURA § 39.151(j-1).

<sup>28</sup> PURA § 39.603(d).

<sup>29</sup> PURA § 39.608(a).

pledged in connection with . . . the issuance of debt obligations, at which time they will become the default property” of the assignee.<sup>30</sup> Default property constitutes “a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of default charges depends on further acts of [ERCOT] or others that have not yet occurred.”<sup>31</sup> “A debt obligation order issued under [subchapter M] shall remain in effect and the property shall continue to exist for the same period as the pledge of the state described by Section 39.609,” that is, “until the principal, interest and premium, and any other authorized charges incurred and contracts to be performed in connection with the related debt obligations have been paid and performed in full.”<sup>32</sup> “All revenues and collections resulting from default charges shall constitute proceeds only of the default property arising from the debt obligation order.”<sup>33</sup> Transactions involving the “transfer and receipt of default charges are exempt from state and local sales and use, franchise, and gross receipts taxes.”<sup>34</sup>

A debt obligation order under PURA § 39.603 must ensure that “the imposition and collection of default charges authorized in the order shall be nonbypassable by wholesale market participants.”<sup>35</sup> A debt obligation order is also required to “include a mechanism requiring that default charges be reviewed and adjusted at least annually, not later than the 45th day after the anniversary date of the order to correct over-collections or under-collections over the preceding 12 months and ensure the expected recovery of amounts sufficient to timely provide all payments of debt service”.<sup>36</sup> In addition to the required annual reviews, more frequent reviews are allowed and under certain circumstances required to ensure that the amount of the default charges matches the funding requirements approved in a debt obligation order. A debt obligation order must also “include an adjustment mechanism requiring [ERCOT] to adjust default charges to refund, over the remaining period of the default charges, any payments made by a wholesale market participant

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<sup>30</sup> PURA § 39.608(a).

<sup>31</sup> PURA § 39.608(b).

<sup>32</sup> PURA §§ 39.608(b), 39.609.

<sup>33</sup> PURA § 39.608(c).

<sup>34</sup> PURA § 39.607.

<sup>35</sup> PURA § 39.605(1).

<sup>36</sup> PURA § 39.606.

toward unpaid obligations from the period of emergency that were included in the financed default balance.”<sup>37</sup>

In its application, ERCOT requested authorization to sell the initial series of subchapter M bonds to the Comptroller as contemplated in PURA and in this Order.<sup>38</sup> Additionally, ERCOT provided evidence that a subsequent refinancing of such initial issuance of subchapter M bonds and sale in public or private markets consistent with market conditions may result in a lower financing cost.<sup>39</sup> Accordingly, the Commission concludes that, subject to the conditions set forth in this Order, ERCOT is authorized to refinance any existing subchapter M bonds held by the Comptroller without further Commission approval. ERCOT is not required to apply for a subsequent order for any refinancing of subchapter M bonds; however, the authority and approval granted in this Order is effective as to any such refinancing upon, but only upon, ERCOT filing with the Commission a separate issuance advice letter for that issuance demonstrating compliance of that issuance with the provisions of this Order.

“Effective on the date the first debt obligations are issued under [subchapter M], if any provision of [PURA] or portion of [PURA] is held to be invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason, that occurrence does not affect the validity or continuation of [subchapter M or any other provision of PURA] that is relevant to the issuance, administration, payment, retirement, or refunding of [any subchapter M bonds] authorized under [subchapter M] or to any actions of [ERCOT], its successors, an assignee, a collection agent, . . . or an issuer and those provisions shall remain in full force and effect.”<sup>40</sup>

The State of Texas pledged, “for the benefit and protection of financing parties and [ERCOT], that it will not take or permit any action that would impair the value of default property, or reduce, alter, or impair the default charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related [subchapter M bonds] have been paid and performed

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<sup>37</sup> PURA §39.603(c).

<sup>38</sup> ERCOT Ex. 1 at 10.

<sup>39</sup> ERCOT Ex. 3 (Atkins Direct) at 49.

<sup>40</sup> PURA § 39.604(f).

in full.”<sup>41</sup> ERCOT is authorized to include this pledge in any documentation relating to the subchapter M bonds.<sup>42</sup>

The Commission is required to “ensure that the structuring and pricing of [the subchapter M bonds] result in the lowest financing costs consistent with market conditions and the terms of [this Order]” (including, so long as the initial subchapter M bonds are outstanding, the required interest rate payable to the Comptroller and the Comptroller-approved Investment Policy Statement for Texas Economic Stabilization Investment Fund investments<sup>43</sup>).<sup>44</sup>

In this proceeding, ERCOT’s financial analysis shows that financing the amount requested by ERCOT will allow timely replenishment of financial revenue auction receipts used by ERCOT to reduce amounts short-paid to wholesale market participants.<sup>45</sup> Wholesale market participants that are owed balances have an interest in financing the default balance because it provides a prompt method of payment to wholesale market participants who were not paid in full for services provided during the period of emergency.<sup>46</sup> In this proceeding, ERCOT’s financial analysis of the amount initially sought to be financed without a financing vehicle demonstrates that recovery under the existing ERCOT Protocols results in recovery of the default balances by wholesale market participants over more than 26 years.<sup>47</sup>

To facilitate compliance and consistency with applicable statutory provisions, this Order adopts the definitions in PURA § 39.602.

## **II. Description of the Proposed Transaction**

A description of the transactions proposed by ERCOT is contained in its application and the filing package submitted as part of the application. A brief summary of the proposed

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<sup>41</sup> PURA § 39.609.

<sup>42</sup> PURA § 39.609.

<sup>43</sup> See Direct Testimony and Attachment of Mike Reissig: “The Trust Company shall invest the [Texas Economic Stabilization Investment] Fund in accordance with Section 404.0241(a) of the Government Code, the prudent investor standard. It will consider only those investments appropriate for the TESTIF [Texas Economic Stabilization Investment Fund] given its purpose and the potential for distribution requirements.”

<sup>44</sup> Tex. Util. Code § 39.601(e)

<sup>45</sup> ERCOT Ex. 2 (Ögelman Direct) at 28-29.

<sup>46</sup> *Id.* at 27.

<sup>47</sup> *Id.* at 28.

transaction is provided in this section. A more detailed description is included in section III.C., titled Structure of the Proposed Financing.

To facilitate the proposed financing, ERCOT proposed that one or more special purpose funding entities (BondCo) be created. ERCOT will transfer to BondCo the rights to impose, collect, and receive default charges along with the other rights arising under this Order.<sup>48</sup> Upon transfer, these rights will become default property as provided by PURA § 39.608.<sup>49</sup> BondCo will issue subchapter M bonds and will transfer the net proceeds from the sale of the subchapter M bonds to ERCOT in consideration for the transfer of the default property. If ERCOT determines that it is necessary to achieve the lowest overall financing costs consistent with market conditions and the terms of this Order, ERCOT may elect to cause BondCo to be organized and managed in a manner designed to achieve the objective of maintaining BondCo as a bankruptcy-remote entity that would not be affected by the bankruptcy of ERCOT or any other affiliates of ERCOT or any of their respective successors.<sup>50</sup> ERCOT may also elect for BondCo to have at least one independent manager whose approval will be required for certain major actions or organizational changes by BondCo. ERCOT may organize BondCo so that it may issue more than one series of debt under conditions specified in the BondCo organizational documents.<sup>51</sup>

The subchapter M bonds will be issued under an indenture and administered by an indenture trustee. The subchapter M bonds will be secured by and payable solely out of the default charges created under this Order and any other funds pledged under the bond documents.<sup>52</sup> That collateral will be pledged to the indenture trustee for the benefit of the holders of the subchapter M bonds and to secure payment of the default balance.

The servicer of the subchapter M bonds will collect the default charges and remit those amounts to the indenture trustee on behalf of BondCo.<sup>53</sup> The servicer will be responsible for making any required or allowed true-ups of the default charges. If the servicer defaults on its

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<sup>48</sup> ERCOT Ex. 4 (Taylor Direct) at 10.

<sup>49</sup> *Id.*

<sup>50</sup> ERCOT Ex. 3 (Atkins Direct) at 42-43.

<sup>51</sup> *Id.* at 43.

<sup>52</sup> ERCOT Ex. 3 (Atkins Direct) at 20.

<sup>53</sup> ERCOT Ex. 3 (Atkins Direct) at 37.

obligations under the servicing agreement, the indenture trustee may appoint a successor servicer. ERCOT will act as the initial servicer for the subchapter M bonds.

Default charges will be calculated to ensure the collection of an amount sufficient to service the principal, interest, and related charges for the subchapter M bonds incurred to implement this Order.<sup>54</sup> Default charges will be allocated among the qualified scheduling entities (each a QSE) and all congestion revenue rights (each a CRR) account holders representing 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.”<sup>55</sup> The default charges will be calculated, assessed, and charged pursuant to the method described in this Order. In addition to the annual true-up required by PURA § 39.606, interim true-ups may be required and performed as necessary to ensure that the amount collected from default charges is sufficient to service the subchapter M bonds. The methodology for making true-ups and allocation adjustments and the circumstances under which each will be made are described in this Order.

ERCOT’s proposed structure for the default charges is designed to provide substantially level annual debt service and revenue requirements over the life of the bond issue, which cannot exceed 30 years. The final structure as described in the final issuance advice letter may incorporate an initial interest rate and amortization period, which may be reset for a subsequent interest rate and amortization period.

In its application filed on July 16, 2021, ERCOT requested authority to securitize default charges and cause the issuance of subchapter M bonds in the aggregate principal amount of up to \$800 million (the securitizable amount) to finance the default balance.<sup>56</sup> The default balance is an amount not to exceed \$800 million and will consist of any combination of the following amounts as may be determined by ERCOT at the time of the issuance of the subchapter M bonds: (1) an estimated \$419 million in amounts owed to ERCOT by competitive wholesale market participants; (2) an estimated \$762.5 million for financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants; and (3) the upfront costs associated with the issuance of the subchapter M bonds and other costs associated with the

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<sup>54</sup> ERCOT Ex. 3 (Atkins Direct) at 20.

<sup>55</sup> PURA § 39.603(d)

<sup>56</sup> ERCOT Ex. 1 at 10.



implementation of this Order and approved in any issuance advice letter, including the cost of retiring or refunding existing debt, as provided in this Order. ERCOT's current existing debt balance as of June 30, 2021 is \$45,000,000.<sup>57</sup>

Through default charges, BondCo may cover the ongoing costs of maintaining BondCo and ongoing costs of servicing subchapter M bonds because those are a cost to repay amounts financed under Subchapter M as authorized by this Order. The draft issuance advice letter will reflect the estimated ongoing costs of servicing and administering each series of subchapter M bonds authorized in this Order. The amount of such ongoing costs will be updated in the final issuance advice letter to reflect more current information available to ERCOT before the issuance of the subchapter M bonds.

As payments are received from a market participant whose unpaid obligation from the period of emergency were included in the subchapter M bonds, BondCo is required under PURA § 39.603(c) to adjust default charges over the remaining period of the subchapter M bonds.

### **III. Findings of Fact**

The Commission makes the following findings of fact.

#### **A. Procedural History**

##### **Identification of Applicant and Background**

1. ERCOT manages the flow of electric power to more than 26 million Texas customers—representing about 90 percent of the state's electric load.<sup>58</sup> As the independent system operator for the region, ERCOT schedules power on an electric grid that connects more than 46,500 miles of transmission lines and more than 710 generation units. It also performs financial settlement for the competitive wholesale bulk-power market and administers retail switching for 8 million premises in competitive choice areas.<sup>59</sup> ERCOT is a membership-based 501(c)(4) nonprofit corporation governed by a board of directors and is subject to oversight by the Commission and the Texas Legislature.<sup>60</sup> Its members

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<sup>57</sup> ERCOT Ex. 4 (Taylor Direct) at 15.

<sup>58</sup> ERCOT Ex. 2 (Ögelman Direct at 15).

<sup>59</sup> *Id.* at 16.

<sup>60</sup> *Id.* at 15.

include consumers, cooperatives, generators, power marketers, retail electric providers, investor-owned electric utilities, transmission and distribution providers, and municipally owned electric utilities.<sup>61</sup>

2. DELETED.
3. ERCOT acts as the central counter-party for all transactions settled in the ERCOT region (i.e., ERCOT is the sole seller to each buyer, and ERCOT is the sole buyer from each seller).<sup>62</sup> It is essential for ERCOT to maintain revenue neutrality as the central counter-party. ERCOT generates no profit but instead acts as a clearinghouse through which funds are exchanged between buyers and sellers in the ERCOT market.<sup>63</sup> In its role as the central counter-party, ERCOT only transacts with market participants registered with ERCOT as a QSE or a CRR account holder.<sup>64</sup> Under the ERCOT Protocols, the QSE is responsible for settling payments and charges with ERCOT on behalf of the load-serving entities (each an LSE) and resource entities it represents.<sup>65</sup>

#### **Application**

4. On July 16, 2021, ERCOT filed an application for a debt obligation order under PURA § 39.603 to finance the securitizable amount of the default balance and to securitize the corresponding default charges and cause the issuance of subchapter M bonds in an aggregate principal amount of up to \$800 million.<sup>66</sup> The application includes exhibits, schedules, attachments, and testimony. ERCOT's application was assigned Docket No. 52321.

#### **Intervenors**

5. An intervention deadline of July 27, 2021 was established by Order No. 1, which was issued on July 20, 2021.

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 18.

<sup>63</sup> *Id.* at 17-18.

<sup>64</sup> *Id.* at 18.

<sup>65</sup> *Id.*

<sup>66</sup> ERCOT Ex. 1.

6. The following parties were granted intervention in Order No. 2 filed on July 29, 2021: Texas Industrial Energy Consumers; Just Energy Texas, LP; Fulcrum Energy doing business as Amigo Energy, Tara Energy, and Hudson Energy Services, LLC; NRG Energy, Inc.; City of Garland; DC Energy Texas, LC; City of Austin doing business as Austin Energy; Coalition of Competitive Retail Electric Providers; Lower Colorado River Authority and LCRA WSC Energy; Avangrid Renewables, LLC; Exelon Generation Company, LLC; Shell Energy North America (US), L.P.; Gexa Energy LP; Energy Trading Institute; City of Denton; City of Georgetown; City of Lubbock; BP Energy Company; EDF Energy Services, LLC; Citigroup Energy Inc.; Texas Retail Energy LLC; Luminant Energy Company LLC; Tenaska Power Services Co., TPS 1, TPS II, TPS III, TPS IV, Tenaska TOPS REP LP, TOPS 1, TOPS 5, TOPS 6, and TOPS 7; Advanced Power Alliance; Golden Spread Electric Cooperative, Inc.; Texpo Power LP; Saracen Energy West LP; TerraForm Power Operating LLC; Calpine Corporation; Rayburn Country Electric Cooperative, Inc.; East Texas Electric Cooperative, Inc.; Office of Public Utility Counsel; Enel Trading North America Inc.; Engie Resources LLC and Engie Energy Marketing NA, Inc.; South Texas Electric Cooperative; Morgan Stanley Capital Group, Inc.; Vitol Inc.; RWE Renewables Americas, LLC; Texas Treasury Safekeeping Trust Company; and AEP Energy Partners.<sup>67</sup> Commission Staff also participated in the proceeding.
7. DELETED.

### **Notice of Application**

8. ERCOT provided notice of its application to all wholesale market participants through ERCOT's existing communication platforms on July 19, 2021.<sup>68</sup>
9. ERCOT provided proof of notice through a filing on July 19, 2021. In Order No. 2, the notice provided by ERCOT was found reasonable.<sup>69</sup>

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<sup>68</sup> ERCOT Ex. 6.

<sup>69</sup> Docket No. 52321, Order No. 2, Finding Application Sufficient and Notice Reasonable, Memorializing Prehearing Conference, and Adopting Amended Procedural Schedule at 1 (July 29, 2021).

**Testimony**

- 9A. The following parties filed testimony in this docket: ERCOT; Rayburn Country Electric Cooperative; NRG Energy Inc.; Calpine Corporation; and Commission Staff.
- 9B. ERCOT filed rebuttal testimony on August 20, 2021.

**Hearing**

- 9C. The Commission held a hearing on ERCOT's application on August 23, 2021.
- 9D. Post-hearing briefs were filed on September 1, 2021.

**B. Costs and Amount to Be Securitized****1. Default Balance**

10. The term *default balance* is defined in PURA § 39.602(1) to mean “an amount of money of not more than \$800 million that includes only (a) 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; (b) financial revenue auction receipts used by [ERCOT] to temporarily reduce amounts short-paid to wholesale market participants related to the period of emergency; and (c) reasonable costs incurred by [ERCOT . . .] to implement a debt obligation order under [PURA §§] 39.603 and 39.604, including the cost of retiring or refunding existing debt.”<sup>70</sup>
11. The amounts owed to ERCOT by competitive wholesale market participants from the period of emergency that would be or have been otherwise uplifted to other wholesale market participants are estimated at the time of ERCOT's application to be approximately \$418 million (the unpaid defaulted amounts).<sup>71</sup> This amount has since been revised to \$419 million.<sup>72</sup>
12. The financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants related to the period of emergency are estimated as of August 31, 2021 to be \$762.5 million (the revenue auction receipts).<sup>73</sup>

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<sup>70</sup> PURA § 39.602(1).

<sup>71</sup> Taylor Direct at p. 12.

<sup>72</sup> Taylor Rebuttal at p. 17, n.14.

<sup>73</sup> Taylor Direct at 13.

- 12A. To the extent that the financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants are not replenished through the securitization authorized in this Order, it is appropriate as a matter of due diligence and accountability and to avoid further liquidity issues for the Commission to require ERCOT to file in the compliance docket for this proceeding a plan for full replenishment.
13. As permitted under subchapter M, ERCOT requested authorization to, at its option, finance and pay for its upfront costs from the proceeds of the subchapter M bonds.<sup>74</sup> Any amounts so financed will be counted as part of the default balance. Such upfront costs may include (a) the cost of original-issue discount, credit enhancements, and other arrangements to enhance marketability; (b) the cost of ERCOT's financial advisor; (c) United States Securities and Exchange Commission registration fees, underwriters' fees, rating-agency fees, attorneys' fees; (d) any costs incurred by ERCOT, including costs related to the establishment and maintenance of BondCo; (e) any other costs incurred by ERCOT in connection with the implementation of this Order; (f) any costs incurred by ERCOT if this Order is appealed; and (g) the cost of retiring or refunding existing debt. ERCOT's current existing debt balance as of June 30, 2021 is \$45,000,000.<sup>75</sup> 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. The form of issuance advice letter attached to this Order as appendix A 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 before the issuance of the subchapter M bonds.

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<sup>74</sup> *Id.* at 23.

<sup>75</sup> ERCOT Ex. 4 (Taylor Direct) at 15.

**2. Ongoing Costs**

14. ERCOT requested authorization to assess default charges to recover the ongoing costs of maintaining and servicing subchapter M bonds. Ongoing costs are a cost to repay amounts financed under subchapter M as authorized by this Order. The actual ongoing costs of administering and servicing the subchapter M bonds will not be known until the subchapter M bonds are issued. The form of issuance advice letter attached to this Order as appendix A contains sections for the estimated ongoing costs to be paid from the assessment of default charges. The amount of such ongoing costs will be updated in the issuance advice letter to reflect more current information available to ERCOT before the issuance of the subchapter M bonds. ERCOT's best estimate of the ongoing costs associated with the issuance of each series of subchapter M bonds will be specified in the issuance advice letter delivered by ERCOT in connection with the issuance of such series of subchapter M bonds.
15. It is necessary and appropriate for ERCOT to recover the ongoing costs associated with servicing and administering subchapter M bonds through the assessment of default charges because those administrative costs are a cost to repay amounts financed under subchapter M. Ongoing servicing and administration costs are necessary and unavoidable costs of financing the subchapter M bonds under PURA. The payment of ongoing costs from default charges is needed to ensure that the necessary costs to service the subchapter M bonds will be covered.

**3. Amounts to Be Securitized**

16. ERCOT requested authority to securitize default charges and cause the issuance of subchapter M bonds to finance the securitizable amount. It is appropriate for ERCOT to be authorized to cause subchapter M bonds to be issued in an aggregate principal amount not to exceed the securitizable amount of \$800 million, attributable to the portion of the default balance comprising any combination of the following: (1) the unpaid defaulted amounts, (2) the revenue auction receipts, and (3) upfront costs, as described in the issuance advice letter. The authorization granted in this Order is subject to the issuance advice letter process described in this Order.

- 16A. Using the process under ERCOT Protocols § 9.19.1(4) rather than using securitization as authorized in this Order is not appropriate. Using that Protocol process would cause market participants not to be paid in as timely a manner and could present liquidity problems in the wholesale market and drive further uncertainty and destabilization.
17. Subchapter M bonds are needed to preserve the integrity of the wholesale market to the benefit of approximately 26 million Texas customers and to promote the public interest generally, after considering the need to timely replenish financial revenue auction receipts used by ERCOT to reduce amounts short-paid to wholesale market participants, the interests of wholesale market participants that are owed balances, and the potential effects of uplifting those balances to the wholesale market without a financing vehicle. Issuance of this Order will allow wholesale market participants that are owed money to be paid in a more timely manner, replenish financial revenue auction receipts temporarily used by ERCOT to reduce the amounts related to winter storm Uri that were short-paid to the wholesale market participants, and allow the wholesale market to repay the default balance over time.

#### **4. Issuance Advice Letter**

18. ERCOT will file in the compliance docket for this proceeding a draft issuance advice letter in the form attached to this Order as appendix A for review by Commission Staff not later than two weeks before the expected date of the commencement of marketing or sale of each series of subchapter M bonds, other than the series to be sold to the Comptroller. The issuance advice letter for the series to be sold to the Comptroller will be filed within two weeks of the sale to the Comptroller of subchapter M bonds. No later than one week after receipt of the draft issuance advice letter, Commission Staff will provide ERCOT comments and recommendations regarding the adequacy of the information provided.
19. The interest rate on the subchapter M bonds issued to the Comptroller will be determined five business days before the expected closing date for those subchapter M bonds. Because the actual structure and pricing of the subchapter M bonds will not be known at the time this Order is issued, following determination of the final terms of the subchapter M bonds and before issuance of the subchapter M bonds, ERCOT will file in the compliance docket for this proceeding for each series of subchapter M bonds issued, and no later than 24 hours



after the pricing of each series of subchapter M bonds, an issuance advice letter. The form of issuance advice letter attached to this Order as appendix A contains sections for the estimated upfront costs to be paid from the proceeds of the subchapter M bonds. Within 60 days of issuance of the subchapter M bonds, ERCOT will submit to the Commission a final accounting of the total upfront costs with respect to such issuance. The issuance advice letter will report the actual dollar amount of the initial default charges and other information specific to the subchapter M bonds issued. All amounts that require computation will be computed using the mathematical formulas contained in the form of the issuance advice letter.

20. Commission Staff may request revisions of the draft issuance advice letter to ensure that the requirements of PURA and this Order have been met. The initial default charges and the final terms of the subchapter M bonds set forth in the issuance advice letter will become effective on the date of issuance of the subchapter M bonds unless prior to noon on the fourth business day after pricing, the Commission issues an order finding that the proposed issuance does not comply with the requirements of PURA and this Order.
21. If the actual upfront costs payable from the proceeds of the subchapter M bonds (as indicated in ERCOT's issuance advice letter) are less than the upfront costs included in the amount allocated for them from the proceeds of the subchapter M bonds, the periodic billing requirement (as defined in this Order) for the first semi-annual true-up adjustment will be reduced by the amount of such unused funds (together with interest, if any, earned on the investment of such funds). If the actual upfront costs payable from the proceeds of the subchapter M bonds (as indicated in ERCOT's issuance advice letter) are more than the upfront costs included in the amount allocated for them from the proceeds of the subchapter M bonds, the periodic billing requirement for the first semi-annual true-up adjustment will be increased by the amount necessary for the payment of such excess costs.
22. The completion and filing of an issuance advice letter in the form of the issuance advice letter attached as appendix A, including the certification from ERCOT discussed in this Order, are necessary to ensure that any securitization actually undertaken by ERCOT complies with the terms of this Order.

23. The certification statement contained in ERCOT's certification letter will be worded identically with the statement in the form of the issuance advice letter approved by the Commission. Other aspects of the certification letter may be modified to describe the particulars of the subchapter M bonds and the actions that were taken during the transaction.

#### **5. Initial Issuance; Refinancing**

24. ERCOT requests that the initial subchapter M bonds be sold to the Comptroller in a direct private placement as contemplated in PURA, the Texas Government Code, and in this Order. The interest rate to be charged in connection with debt obligations issued pursuant to an investment by the Comptroller is required to be calculated by adding the rate corresponding to the nearest weighted average life of the bonds, determined by the Municipal Market Data Municipal Electric Index, as published by Refinitiv TM3 on the bond pricing date, based on the credit rating of ERCOT, plus 2.5%.<sup>76</sup> For this purpose, the Commission determines that each initial subchapter M bond sold to the Comptroller in a direct private placement may bear interest either (a) at a single fixed rate to maturity, applying the principles set forth in the immediately preceding sentence or (b) at an initial fixed rate for the first three years (or earlier date), and at a new fixed rate based on the nearest remaining weighted average life of the bond from year three to the scheduled final maturity, with that new fixed rate determined five business days before the commencement of year four, in each case applying the principles set forth in the immediately preceding sentence. The term of the subchapter M bonds to maturity cannot exceed 30 years. The sale of the initial subchapter M bonds to the Comptroller at the interest rates described above is appropriate.
25. ERCOT requests that it be authorized to refinance a portion or all of any prior series of subchapter M bonds (including the initial subchapter M bonds to be sold to the Comptroller as described in this Order) without further Commission approval. Any such refinancing bonds may be offered for sale in public or private markets. ERCOT requests that it not be required to apply for a subsequent order for any refinancing of subchapter M bonds or for review and approval under PURA § 39.151(d-2); however, the authority and approval

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<sup>76</sup> *Id.*

granted in this Order is effective as to any such refinancing upon, but only upon, ERCOT filing with the Commission a separate issuance advice letter for that issuance and demonstrating compliance of that issuance with the provisions of this Order, subject to the Commission's authority to issue an order finding that the issuance does not comply with the provisions of this Order or PURA.

- 25A. Affording ERCOT the ability to refinance any outstanding subchapter M bonds is in the public interest, considering the interest of both the ERCOT market and the State of Texas's interest in the economic stabilization fund, and will afford ERCOT the ability to expeditiously refinance the Comptroller's investment in subchapter M bonds and give ERCOT the greatest opportunity to achieve the lowest overall financing costs under subchapter M.

### **C. Structure of the Proposed Financing**

#### **1. BondCo**

26. ERCOT will create one or more special purpose funding entities (each of which is referred to as BondCo). BondCo will be a Delaware limited liability company with ERCOT as its sole member. BondCo will be formed for the limited purpose of (a) imposing, collecting, and receiving default charges and acquiring default property and related assets to support its obligations under the subchapter M bonds, (b) issuing subchapter M bonds in one or more series, and (c) performing other activities relating thereto or otherwise authorized by this Order. BondCo will not have authority to engage in any other activities and will have no assets other than as contemplated in this Order and related assets to support its obligations under the subchapter M bonds. Obligations relating to the subchapter M bonds will be BondCo's only significant liabilities.
- 26A. ERCOT will obtain either a United States Internal Revenue Service ruling (e.g., a private letter ruling) or an opinion of tax counsel sufficient to support the issuance of the bonds before issuing the subchapter M bonds.
27. If ERCOT determines it to be necessary to achieve the lowest overall financing costs consistent with market conditions, ERCOT may elect to cause BondCo to be organized and managed in a manner designed to achieve the objective of maintaining BondCo as a

- bankruptcy-remote entity that would not be affected by the bankruptcy of ERCOT or any other affiliates of ERCOT or any of their respective successors.
- 27A. ERCOT may also elect to cause BondCo to have at least one independent manager whose approval will be required for certain major actions or organizational changes by BondCo.
- 27B. BondCo may also be restricted from amending the provisions of the organizational documents that relate to bankruptcy-remoteness of BondCo without the consent of the independent manager.
- 27C. BondCo may also be restricted from instituting bankruptcy or insolvency proceedings, from consenting to the institution of bankruptcy or insolvency proceedings against it, or from dissolving, liquidating, consolidating, converting, or merging without the consent of the independent manager. Other restrictions to facilitate bankruptcy remoteness may also be included in the organizational documents of BondCo, as applicable under rating agency considerations.
- 27D. It is necessary and appropriate that ERCOT structure BondCo in the manner that will result in lowest overall uplift charges consistent with market conditions.
- 27E. The initial capital of BondCo will be a nominal amount of \$100. However, if necessary to maintain status as a bankruptcy-remote entity or to preserve ERCOT's status as an exempt 501(c)(4) organization under applicable federal tax and securities laws with respect to any issuance of subchapter M bonds, then as a condition to the issuance of subchapter M bonds, BondCo will secure the minimum capital as may be required in accordance with such laws and regulations then in effect.
- 27F. As a condition to accepting any issuance advice letter relating to any issuance of subchapter M bonds in a public or private offering, it is appropriate for the Commission to require documentation, opinions, or other assurances as may be reasonably necessary to ensure that the applicable capitalization requirements have been met.
28. Concurrently with the issuance of any of the subchapter M bonds, ERCOT will transfer and assign to BondCo all of ERCOT's rights under this Order related to the amount of subchapter M bonds to be issued by BondCo, including rights to impose, collect, and receive default charges approved in this Order. After the transfer, BondCo will acquire all

of the right, title, and interest of ERCOT in the default property arising under this Order that is related to the amount of subchapter M bonds issued by BondCo.

29. BondCo will issue one or more series of subchapter M bonds consisting of one or more tranches. BondCo will pledge to the indenture trustee, as collateral for payment of the subchapter M bonds, the default property, including BondCo's right to receive the default charges as and when collected, and certain other collateral described in ERCOT's application.
30. The use and proposed structure of BondCo and the limitations related to its organization and management are necessary and appropriate to minimize risks related to the proposed financing transactions and to minimize the default charges.

## **2. Credit Enhancement and Arrangements to Enhance Marketability**

31. ERCOT requested approval to use additional forms of credit enhancement (including letters of credit, reserve accounts, surety bonds, or guarantees) and other mechanisms designed to promote the credit quality and marketability of the subchapter M bonds if the benefits of those arrangements exceed their cost. ERCOT also asked that the costs of any credit enhancements as well as the costs of arrangements to enhance marketability be included in the amount of upfront costs to be securitized. If the use of original issue discount, credit enhancements, or other arrangements is proposed by ERCOT, ERCOT will provide the Commission's designated representative copies of all cost-benefit analyses performed by or for ERCOT that support the request to use those arrangements.
32. ERCOT's proposed use of credit enhancements and arrangements to enhance marketability is customary and is necessary and appropriate to provide the best credit quality and marketability of the subchapter M bonds, provided that ERCOT certifies that the enhancements or arrangements provide benefits greater than their cost and that such certifications are agreed to by the Commission's designated representative.

## **3. Default Property**

33. DELETED.

34. The rights to impose, collect, and receive the default charges approved in this Order along with the other rights arising under this Order will become default property upon the transfer of those rights by ERCOT to BondCo under PURA § 39.608(a).
- 34A. If subchapter M bonds are issued in more than one series, then the default property transferred as a result of each issuance will be only those rights associated with that portion of the default property securitized by such issuance.
- 34B. The rights to impose, collect, and receive default charges along with the other rights arising under this Order as they relate to any portion of the total amount authorized to be securitized that remains unsecuritized will remain with ERCOT and will not become default property unless and until transferred to BondCo in connection with a subsequent issuance of subchapter M bonds.
35. DELETED.
36. Default property and all other collateral will be held and administered by the indenture trustee pursuant to the indenture, as described in ERCOT's application. This structure is customary for securitized debt and pledged collateral and is necessary and appropriate to ensure that the lowest financing costs will be achieved.

#### **4. Servicer and Servicing Agreement**

37. ERCOT will execute a servicing agreement with BondCo. The servicing agreement may be amended, renewed, or replaced by another servicing agreement.
- 37A. The entity responsible for carrying out the servicing obligations under any servicing agreement is the servicer. ERCOT will be the initial servicer but may be succeeded as servicer by another entity under certain circumstances detailed in the servicing agreement and as authorized by the Commission under this Order.
- 37B. A replacement servicer is not permitted to begin providing service until the date the Commission approves the appointment and the servicing fee of the replacement servicer.
- 37C. Under the servicing agreement, the servicer is required to impose and collect the applicable default charges for the benefit and account of BondCo, to make the periodic true-up adjustments of default charges required or allowed by this Order, and to account for and remit the applicable default charges to or for the account of BondCo in accordance with

the remittance procedures contained in the servicing agreement without any charge, deduction, or surcharge of any kind, other than the servicing fee specified in the servicing agreement.

- 37D. Under the terms of the servicing agreement, if any servicer fails to perform its servicing obligations in any material respect, either the indenture trustee acting under the indenture to be entered into in connection with the issuance of the subchapter M bonds or the indenture trustee's designee may—or upon the instruction of the requisite percentage of holders of the outstanding amount of subchapter M bonds, will—appoint an alternate party to replace the defaulting servicer, in which case the replacement servicer will perform the obligations of the servicer under the servicing agreement.
- 37E. The obligations of the servicer under the servicing agreement and the circumstances under which an alternate servicer may be appointed will be more fully described in the servicing agreement.
- 37F. The rights of BondCo under the servicing agreement will be included in the collateral pledged to the indenture trustee under the indenture for the benefit of holders of the subchapter M bonds.
- 38. The servicing agreement negotiated as part of any financing under this Order will contain a recital clause that the Commission or its attorney will enforce the servicing agreement for the benefit of Texas wholesale market participants or their customers to the extent permitted by law.
- 39. The servicing agreement negotiated as part of this securitization will include a provision that ERCOT will indemnify the Commission in connection with any increase in servicing fees that become payable as a result of a default resulting from ERCOT's willful misconduct, bad faith, or negligence in performance of its duties or observance of its covenants under the servicing agreement.
- 40. The obligations to continue to provide service and to collect and account for default charges will be binding on ERCOT and its successors.
- 40A. The default charges will be assessed on all wholesale market participants in accordance with this Order, including on wholesale market participants who are in default but still