

participating in the wholesale market and wholesale market participants who enter the market after this Order is issued.

- 40B. 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.
- 41. The servicing arrangements described in this Order are reasonable and are necessary and appropriate to reduce risk associated with the proposed financing, result in lower default charges, and preserve the integrity of the wholesale market and the public interest.

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 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.
- 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. This structure is

reasonable, provided that the issuance advice letter demonstrates that all the statutory requirements are met.

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 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 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

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

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

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.

- 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 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

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

- 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 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

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.
52. The use of a collection account and its subaccounts in the manner set forth in this Order is customary and is reasonable, necessary, and appropriate to lower risks associated with the financing and ensure that the lowest financing costs under subchapter M will be achieved.

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.
- 53A. It is necessary and appropriate that default charges 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, are necessary and unavoidable costs of financing the subchapter M bonds under PURA, and are needed to ensure that the necessary costs to service the subchapter M bonds will be covered.
54. The subchapter M bonds 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.
- 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.
55. 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 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.
- 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.
- 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 to develop and adopt new Protocol provisions governing the assessment and collection of default charges in accordance with this Order and PURA.
- 58. 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. 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).
60. In keeping with the Protocols described in this Order, the precise allocation methodology to be utilized by the servicer, for the assessment of default charges is set forth below (the default charges assessment methodology):
 - a. 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. The servicer will amortize the periodic billing requirement monthly for the given period (the monthly amortization amount).
 - c. The servicer will assess the monthly amortization amount to each 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.
61. The periodic payment requirement is the required periodic payment for a given period 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 will be updated in the issuance advice letter.
62. The periodic billing requirement represents the aggregate dollar amount of default charges that must be billed during a given period so that the default charge collections will be sufficient to meet the sum of all periodic payment requirements 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.
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, will result in lower subchapter M bonds charges, will support the financial integrity of the wholesale market, and are 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

- 65. PURA § 39.606 states that a debt obligation order must include a mechanism requiring that the default charges be reviewed and adjusted at least annually to correct any under-collections or over-collections during the preceding 12 months and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service.
- 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 45th day after the anniversary of the date of this Order. Those adjustment filings will be made in the compliance docket for this proceeding.

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.
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.
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.
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.
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;
 - 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,

- 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;
- 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

72. In addition to the 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 the servicer 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; or
 - b. to replenish any ERCOT voluntary supplemental capital injections, and any other draws on any subaccounts, as required by the indenture.
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

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 to confirm the servicer's adjustment complies with PURA and this Order. Any true-up adjustment filed with the Commission 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.
75. The true-up procedures contained in this 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, will result in lower subchapter M bonds charges, will support the financial integrity of the wholesale market, and are necessary to protect the public interest.

12. Designated Representative

76. 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), 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 all matters related to the structuring and pricing of the subchapter M bonds to be determined through a joint decision of ERCOT and the Commission or its designated representative. The Commission's participation 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).

77. It is necessary and appropriate that the Commission or its designated representative 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 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.
78. It is necessary and appropriate that the Commission or its designated representative have an opportunity to require a certificate from any underwriters 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 expects 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 the Commission must 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). 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.

- 80A. The financing needs to be promptly consummated to achieve the goal in PURA § 39.601(c) of preserving the integrity of the electricity market. 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 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).
- 80B. The financing structure approved in this Order 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).
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 that must be trued-up at least annually, but more frequent true-ups may be required 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 required for BondCo to maintain status as a bankruptcy-remote entity or for ERCOT to preserve its 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 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).

82. ERCOT's proposed transaction structure is necessary and appropriate 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).
83. DELETED.

D. Use of Proceeds

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.
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 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.
7. The financing mechanism authorized in this Order—including but not limited to the issuance advice letter submission process 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).
8. The financing mechanism authorized in this Order, including the securitization of default charges and issuance of subchapter M bonds, satisfies the requirements of PURA § 39.603(a).

- 8A. The financing mechanism authorized in this Order is needed to preserve the integrity of the wholesale market and the public interest.
- 9. This Order adequately details the default balance to be recovered and the period over which ERCOT is permitted to recover nonbypassable default charges in accordance with the requirements of PURA § 39.603(b).
- 10. The upfront costs included in 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).
- 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 may be assessed to repay the subchapter M bonds complies with the requirement 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.
- 13. This Order complies with the requirements of PURA § 39.601(d) that the proceeds of the subchapter M bonds be used solely for the purpose of financing default balances that otherwise would be or have been uplifted to the wholesale market.
- 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).
- 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. 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).
- 16A. The subchapter M bonds authorized to be issued under this Order and PURA § 39.603 do not create a personal liability for ERCOT.
- 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).
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.
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.
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.
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.
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.
23. Under PURA § 39.607, the transfer and receipt of default charges to BondCo as described in this Order are exempt from state and local sales and use, franchise, and gross receipts taxes.
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.
25. BondCo is authorized to issue subchapter M bonds in accordance with this Order.

26. The subchapter M bonds issued under this Order are debt obligations within the meaning of that term in PURA § 39.601(a).
- 26A. All the protections provided under subchapter M of chapter 39 of PURA apply to subchapter M bonds and holders of those bonds.
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 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.
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, 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.” BondCo, in issuing subchapter M bonds, is authorized under PURA § 39.609 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.
30. This Order remains in full force and effect and unabated notwithstanding the bankruptcy of ERCOT, its successors, or assignees.
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.
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).
33. This Order is not subject to review or appeal except as expressly permitted under PURA § 39.653(h).
- 33A. 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 PURA is held to be invalid or is invalidated, superseded, replaced, or repealed or expires for any reason, that occurrence 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.

- 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 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 Securitiz.** 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 be filed in the compliance docket for this proceeding within two weeks of the sale to the Comptroller of subchapter M bonds. 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.
- 7D. All amounts in the issuance advice letter 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 are effective on the date of issuance of the subchapter M bonds. The issuance of the subchapter M bonds must not occur before the fifth business day after pricing. 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 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 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.** The servicer of the subchapter M bonds must bill a wholesale market participant or other entity 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 must not exceed 30 years from the date of issuance of the first series of subchapter M bonds. 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.
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.
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.
14. **Rights and Remedies.** The Commission authorizes 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 this Order. ERCOT or any subsequent holder of the default property 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

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.
17. **Upfront Costs.** The Commission authorizes ERCOT to finance 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 described in this Order.
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.
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. 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.

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 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 of the amount of such funds available for crediting to the benefit of wholesale market participants.
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 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 those subaccounts or to interest 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.

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 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 be equity capital of ERCOT contributed to BondCo and not serve as collateral for subchapter M bonds or must 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 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 this Order.
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.

24. **Life of Bonds.** The legal final maturity of the subchapter M bonds authorized by this Order must not exceed 30 years.
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.
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. Nothing in this Order precludes 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.

27. **Use of BondCo.** ERCOT must use BondCo, a special purpose entity as 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.
28. DELETED.
29. DELETED.

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) 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.

- 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.
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.
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 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.** Any amendment to the servicing agreement, administration agreement, indenture, or default property sale or assignment agreement must not increase the ongoing costs without the Commission's approval. Commission authorization is not required for any amendment that does not increase the ongoing costs. If an amendment to any such agreement 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 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.
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

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

F. Use of Proceeds

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

37. **Limitation of Authorization.** The Commission limits the authorization 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 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 is automatically extended to a date that is 90 days after the date such disruption ends.

38. **Internal Revenue Service Private Letter or Other Rulings.** 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 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 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.
39. **Binding on Successors.** ERCOT and any other entity responsible for billing and collecting default charges on behalf of BondCo 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.
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.

41. **Effectiveness of Order.** This Order is effective upon issuance and is not subject to rehearing by the Commission. Notwithstanding the foregoing, default property must not be created under this Order—and ERCOT is not be authorized to impose, collect, and receive default charges—until the transfer of ERCOT’s rights under this Order to BondCo in conjunction with the issuance of the subchapter M bonds.
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.
43. **Effect.** 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.
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*.
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

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

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