



## Filing Receipt

**Received - 2021-10-12 11:54:42 AM**  
**Control Number - 52321**  
**ItemNumber - 208**

**DOCKET NO. 52321**

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

**NRG ENERGY, INC.'S COMMENTS ON PROPOSED DEBT OBLIGATION ORDER**

NRG Energy, Inc. ("NRG") files these Comments pursuant to the Public Utility Commission of Texas ("Commission") Counsel memorandum issued on October 8, 2021 ("Memorandum"). The Memorandum requires suggested corrections to be submitted by 12:00 p.m. October 12, 2021. These Comments are timely filed.

**I. INTRODUCTION**

The Memorandum was accompanied by a Draft Debt Obligation Order ("Draft Order"). NRG appreciates the opportunity to provide suggested revisions to the Draft Order. These suggested revisions are intended to enhance clarity and ensure that the Draft Order fully incorporates the directions given by the Commissioners during their September 30, 2021 Open Meeting.

**II. NRG'S RECOMMENDED REVISIONS**

NRG respectfully requests the following revisions to the Draft Order (all page number references are to the redlined version of the Draft Order attached to the Memorandum):

**Pages 19-20, Finding of Fact 13**

During their Open Meeting on September 30, 2021, the Commissioners stated that should ERCOT not need funds to retire existing ERCOT debt (because, for example, ERCOT received a waiver of certain covenants prohibiting new debt), such funds should be allocated to replenishing financial revenue auction receipts. However, that directive has not been incorporated into the Draft Order. NRG respectfully requests that Finding of Fact 13 be amended and new Finding of Fact 13A be added to the Draft Order.

~~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. 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. 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. Should such update reduce the amount of upfront costs, unused default balance funds allocated to upfront costs shall be reallocated to replenish financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants.

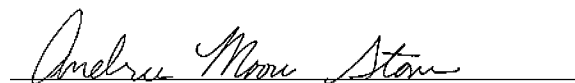
13A. ERCOT shall seek from its existing creditors a waiver of any requirement that it retire or refund existing debt prior to incurring additional debt. Should ERCOT receive such a waiver, funds allocated to the retirement or refund of existing debt shall be reallocated to replenish financial revenue auction receipts used by ERCOT to temporarily reduce amounts short-paid to wholesale market participants.

Finding of Fact 50.1 refers to the “debt service reserve.” ERCOT had proposed that it be allowed to reserve a portion of the proceeds of the bonds as a “debt service reserve,” but the Draft Order removes that provision. Accordingly, the remaining reference to it in Finding of Fact 50.1 should be struck to be consistent with the rest of the Draft Order.

### **III. CONCLUSION AND PRAYER**

NRG thanks the Commission for the opportunity to provide these suggested revisions to the Draft Order and respectfully asks the Commission to adopt each suggested revision described herein.

Respectfully submitted,



NRG ENERGY, INC.

BAKER BOTTS L.L.P.


Kristina F. Rollins  
State Bar No. 24033012  
Lauren D. Damen  
State Bar No. 24078394  
1005 Congress Avenue, Suite 950  
Austin, TX 78701  
Telephone: (512) 691-6245  
Email: Kristina.Rollins@nrg.com  
Email: Lauren.Damen@nrg.com

Andrea Stover  
State Bar No. 24046924  
Patrick Leahy  
State Bar No. 24092674  
Landon Lill  
State Bar No. 24092700  
98 San Jacinto Blvd #1500  
Austin, Texas 78701  
Telephone: (512) 322-2500  
Facsimile: (512) 322-2501  
Email: andrea.stover@bakerbotts.com  
Email: patrick.leahy@bakerbotts.com  
Email: landon.lill@bakerbotts.com

ATTORNEYS FOR NRG ENERGY, INC.

### **CERTIFICATE OF SERVICE**

I certify that on October 12, 2021 this instrument was filed with the Public Utility Commission of Texas and a true and correct copy of it was served on all parties of record in this proceeding by e-service.

  
Andrea Moore Stover