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

CITY OF AUSTIN D/B/A AUSTIN ENERGY'S
STATEMENT OF POSITION

COMES NOW, the City of Austin d/b/a Austin Energy (Austin Energy) and files this statement of position pursuant to 16 Texas Administrative Code (TAC) § 22.124. Austin Energy filed a motion to intervene in this proceeding on July 23, 2021,¹ which was granted on July 28, 2021 at the prehearing conference.² On July 29, 2021, the administrative law judge (ALJ) issued Order No. 2, requiring intervenors to file direct testimony or a statement of position by August 12, 2021.³ Therefore, this statement of position is timely filed.

I. INTRODUCTION

On July 16, 2021, the Electric Reliability Council of Texas (ERCOT) filed its Application for a Debt Obligation Order under PURA Chapter 39, Subchapter M, and Request for a Good Cause Exception (ERCOT's Default Application). ERCOT's Default Application seeks Public Utility Commission (Commission) approval to finance the Default Balance, as that term is defined in PURA § 39.602(1), with \$800 million in funding provided by the State. ERCOT's Default Application addresses various implementation details, including proposals on the use of these funds and a methodology to assess charges to repay the funds, with interest, over time.

II. AUSTIN ENERGY'S STATEMENT OF POSITION

In this statement of position, Austin Energy addresses three proposals found in ERCOT's Default Application that either require interpretation of certain aspects of PURA Chapter 39, Subchapter M, or necessitate a solution to balance conflicting objectives found in the law.

¹ Austin Energy's Motion to Intervene (Jul. 23, 2021).

² Order No. 2 Finding Application Sufficient and Notice Reasonable, Memorializing Prehearing Conference, and Adopting Amended Procedural Schedule (Jul. 29, 2021).

³ *Id.*

Specifically, this statement of position addresses the proposed use of the \$800 million in funds allocated by the State to fund the Default Balance, interpretation of the scope of the Default Balance, and the proposed methodology to allocate default charges to market participants. This statement of position is based on information contained in ERCOT's Default Application and Direct Testimony and responses to discovery received through this docket as of this filing date.

Proposed Use of Funds

Given that the \$800 million in funds provided by the State could not fully reimburse market participants that have been short paid *and* fully replenish the Congestion Revenue Rights (CRR) auction revenue fund, ERCOT proposes a prioritization and allocation of the limited funds. First, ERCOT proposes \$50 million be set aside for the potential need to retire or refund existing debt, if needed. Second, ERCOT proposes \$318 million be applied to short payments related to “terminated market participants.” Third, ERCOT proposes the remaining \$432 million be used to partially replenish the remaining \$766 million owed to the CRR auction revenue fund.⁴ Austin Energy believes this approach strikes the right balance of meeting the competing needs of replenishing the CRR auction revenue fund and providing funds to ERCOT market participants short paid as a result of defaults attributed to the February 2021 winter weather event. Allocating a portion of the default funds toward replenishing the CRR auction revenue fund is a fair outcome even for those entities who have been short paid, as the fund was previously used to borrow money to lower their short payment amounts, thus already benefitting those entities who would have otherwise been short paid at even higher amounts.

Austin Energy also agrees with ERCOT's proposed approach to direct any uplift funds received by defaulting entities still participating in the ERCOT wholesale electricity market. Although not specifically addressed in ERCOT's Default Application and Direct Testimony, ERCOT's response to Austin Energy's First Request for Information, Question No. AE 1-1, provides insight into how this circumstance would be handled.⁵ ERCOT indicated that any funds payable to Rayburn Electric Cooperative, Inc. (Rayburn) will be used to reduce Rayburn's default amount which, in turn, would be used to further replenish the CRR auction revenue fund and be

⁴ ERCOT Default Application at 6; Direct Testimony of Sean Taylor at 16-18.

⁵ ERCOT's Response to City of Austin d/b/a Austin Energy's First Request for Information, Question No. AE 1-1 (Aug. 2, 2021).

distributed to short paid market participants based on a pro rata allocation.⁶ Any funds payable to Brazos Electric Power Cooperative, Inc. (Brazos) would be allocated to a segregated account while Brazos' bankruptcy proceeding is pending.⁷

Scope of the Default Balance

ERCOT assumes short payments related to electric cooperatives cannot be funded by the Default Balance because PURA Chapter 39, Subchapter M, uses the term “competitive wholesale market participants” when referring to short payments eligible for the Default Balance.⁸ Austin Energy disagrees with the interpretation of this language by ERCOT, but supports the proposal to limit the amount of funds directed to short payments to the proposed \$318 million associated with terminated market participants. This proposal recognizes that Senate Bill (SB) 1580, the uplift balance securitization mechanism described in PURA Chapter 39, Subchapter N, and possibly other financial vehicles provide alternative paths for defaulting electric cooperatives to pay their defaulted amounts. Austin Energy would agree with ERCOT's interpretation of this language if it specified *retail* competitive market participants, but it did not. All wholesale market participants, including municipally-owned utilities (MOUs) and electric cooperatives, compete in the wholesale market and thus are competitive wholesale market participants. MOUs and electric cooperatives that have not elected to do so do not compete in the retail competitive market. The record should clarify that the rationale behind allocating \$318 million to short payments associated with terminated market participants is a policy decision that recognizes the other financing opportunities available to defaulting electric cooperatives and the limited availability of funds provided by PURA Chapter 39, Subchapter M.

Allocation of Default Charges

While ERCOT intends to use the pro rata methodology found in the ERCOT Protocols to assess default charges, consistent with language found in PURA § 39.603(d), it identifies one necessary deviation from the Protocol language. In order to account for new market participants that must be assessed these charges under PURA § 39.603(d), ERCOT proposes to determine the allocation ratio on a rolling monthly basis using “final settlement data,” rather than basing the

⁶ *Id.*

⁷ *Id.*

⁸ Direct Testimony of Kenan Ögelman at 37-38.

uplift amounts on market activity during the month prior to when a default occurs.⁹ Austin Energy recognizes that ERCOT must meet two competing requirements found in PURA § 39.603(d) and supports ERCOT's proposed approach as a reasonable solution to account for new market participants while following all other aspects of the allocation methodology contained in the ERCOT Protocols as of March 1, 2021. Austin Energy also appreciates ERCOT's clarification, provided in response to Austin Energy's First Request for Information, Question No. AE 1-2, that any changes made after March 1, 2021 to the Protocol language regarding the pro rata share methodology for assessing the default charges would not affect the allocation method outlined in ERCOT's Default Application and Direct Testimony.¹⁰

III. CONCLUSION

Austin Energy concludes that ERCOT's Default Application offers adequate and thoughtful solutions to key implementation details regarding this vital securitization mechanism and has no recommendations related to ERCOT's proposals to offer at this time. Austin Energy does, however, raise one concern with ERCOT's interpretation of the language found in PURA Chapter 39, Subchapter M that would benefit from clarification in the record, but do not find that this issue warrants any change to ERCOT's substantive proposals. Austin Energy appreciates this opportunity to provide a statement of position on ERCOT's Default Application and reserves the right to modify its position and address other contested issues based on additional discovery responses made available through this docket and testimony and statements of position filed by other parties to this proceeding.

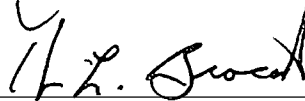
⁹ Direct Testimony of Kenan Ögelman at 31-34.

¹⁰ ERCOT's Response to City of Austin d/b/a Austin Energy's First Request for Information, Question No. AE 1-2 (Aug. 2, 2021).

Respectfully submitted,

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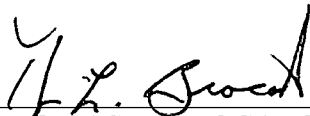
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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 12, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



THOMAS L. BROCATO