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DOCKET NO. 52322

APPLICATION OF THE ELECTRIC	§	BEFORE THE
RELIABILITY COUNCIL OF TEXAS,	§	
INC. FOR A DEBT OBLIGATION	§	
ORDER TO FINANCE UPLIFT	§	PUBLIC UTILITY COMMISSION
BALANCES UNDER PURA CHAPTER	§	
39, SUBCHAPTER N, AND 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 to Finance Uplift Balances Under PURA Chapter 39, Subchapter N, for an Order Initiating a Parallel Docket, and for a Good Cause Exception (ERCOT's Uplift Application). ERCOT's Uplift Application seeks Public Utility Commission (Commission) approval to finance the Uplift Balance, as that term is defined in PURA § 39.652(4), with up to \$2.1 billion in securitized funds. ERCOT's Uplift Application covers various implementation details, including the process for distributing uplift funds and the method for assessing uplift charges. ERCOT's Uplift Application recommends that the Commission open a parallel docket where: 1) eligible load serving entities may opt-out of the securitization mechanism as allowed

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.*

under PURA § 39.653(d), and 2) participating entities can document their exposure to uplift costs as required by PURA § 39.653(b)(3).

II. AUSTIN ENERGY'S STATEMENT OF POSITION

Austin Energy generally supports the implementation details included in ERCOT's Uplift Application, including the recommendation to open a parallel docket to enable parties to opt-out or document exposure to eligible costs, an action that the Commission has already taken.⁴ Austin Energy, however, does specifically address one aspect of ERCOT's Uplift Application that ERCOT raised for the Commission's consideration in its Direct Testimony. Austin Energy also requests that the Commission ensure that any order issued in this proceeding does not adversely impact those entities who choose to opt-out of this securitization mechanism. This statement of position is based on information contained in ERCOT's Uplift Application and Direct Testimony and responses to discovery received through this docket as of this filing date.

Electric Cooperative Eligibility

ERCOT interprets PURA § 39.652(4) and 39.653(i) to exclude Brazos Electric Power Cooperative, Inc. (Brazos) and Rayburn Electric Cooperative, Inc. (Rayburn) from this financing mechanism and requests that the Commission make a determination on this issue in the parallel docket.⁵ ERCOT further assumes that electric cooperatives eligible for funding under Senate Bill (SB) 1580 will not seek funding under PURA Chapter 39, Subchapter N, established by House Bill (HB) 4492, but recognizes that others may interpret PURA differently and, should that occur, the Commission would need to resolve this disagreement.⁶ Austin Energy agrees that the language found in HB 4492 is unclear on this matter and encourages the Commission to address this through a preliminary order. While PURA § 39.652(4) and 39.653(i) recognize that any amounts securitized by electric cooperatives under Chapter 41, Subchapter D, established by SB 1580, cannot be included in the Uplift Balance, it does not indicate that such amounts must be recovered through the SB 1580 securitization mechanism instead of the Uplift Balance securitization

⁴ *Proceeding for Eligible Entities to File an Opt Out Pursuant to PURA § 39.653(d) and for Load-Serving Entities to File Documentation of Exposure to Costs Pursuant to the Debt Obligation Order in Docket No. 52322, Docket No. 52364 (pending).*

⁵ ERCOT's Uplift Application at 7.

⁶ Direct Testimony of Kenan Ögelman at 10.

mechanism established by HB 4492. Further, PURA § 39.653(d) provides indication that the Legislature intended electric cooperatives to be eligible for uplift funds as it explicitly recognizes an electric cooperative as an entity that may opt-out of the securitization mechanism. While the Commission may need to consider unique circumstances, such as Brazos’s bankruptcy proceeding, in its guidance on this matter, the Commission should not remove this opportunity for all electric cooperatives.

At least one electric cooperative, Rayburn, has indicated its interest in availing itself of this financing mechanism.⁷ Rayburn’s participation in particular would benefit the overall objective of this financing mechanism to stabilize the ERCOT wholesale electricity market⁸ by not only providing needed financial relief for Rayburn, but also creating the opportunity to direct those funds to further replenish the Congestion Revenue Rights (CRR) auction revenue fund and pay entities who were short paid. This would benefit the entire wholesale electricity market for the same reasons as the Default Balance securitization mechanism also established by HB 4492.⁹ Because Rayburn is currently in default with ERCOT, any uplift funds received by Rayburn can be directed to short-paid entities and the replenishment of the CRR auction revenue fund. ERCOT’s response to Austin Energy’s First Request for Information, Question No. AE 1-1, affirmed that ERCOT’s systems can be set up to direct uplift funds in a particular manner to certain qualified scheduling entities if directed by the Commission.¹⁰ If uplift funds can be used to allow Rayburn to repay all or a portion of its owed amounts, as it appears Rayburn wishes to do, in a timelier manner than other options, this will provide more immediate benefit to the stabilization of the ERCOT wholesale electricity market and should be strongly considered by the Commission.

Opt-Out Mechanism

PURA § 39.653(d) directs the Commission to develop a one-time process that allows certain market participants, including municipally owned utilities, to “opt out of the uplift charges

⁷ See Rayburn Country Electric Cooperative Inc.’s Objections to and Motion to Strike Testimony of Kenan Ögelman and Sean Taylor (Aug. 20, 2021).

⁸ PURA § 39.651.

⁹ See *Application of the Electric Reliability Council of Texas, Inc. for a Debt Obligation Order Under PURA Chapter 39, Subchapter M, and Request for a Good Cause Exception*, Docket No. 52321 (pending).

¹⁰ 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).

by paying in full all invoices owed for usage during the period of emergency.”¹¹ Load-serving entities and transmission-voltage customers that opt out during this process are precluded from receiving proceeds from the uplift financing. In response to this provision, the Commission has initiated PUC Docket No. 52364, *Proceeding for Eligible Entities to File and Opt Out Pursuant to PUC § 39.653(d) and for Load-Serving Entities to File Documentation of Exposure to Costs Pursuant to the Debt Obligation Order In Docket No. 52322*. Based upon the clear and unambiguous language in Section 39.653(d), Austin Energy requests the Commission ensure that the final order issued in this proceeding does not adversely impact those entities who choose to opt-out in PUC Docket No. 52364.

III. CONCLUSION

ERCOT’s Uplift Application generally meets the legislative intent of PURA Chapter 39, Subchapter N, with one exception. As ERCOT recognizes, it is ultimately up to the Commission to determine whether and how electric cooperatives, including those in default to ERCOT, participate in the uplift securitization mechanism. Austin Energy supports the Commission allowing electric cooperatives, including Rayburn, to participate in this vital securitization mechanism as this would greatly benefit the financial stability of the ERCOT wholesale electricity market as a whole.

Austin Energy appreciates this opportunity to provide a statement of position on ERCOT’s Uplift 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.

¹¹ PURA § 39.653(d).

Respectfully submitted,

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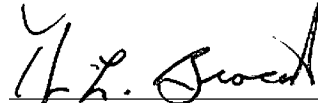
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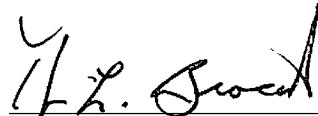
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**ATTORNEY FOR CITY OF AUSTIN,
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CERTIFICATE OF SERVICE

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