Filing Receipt

Received - 2021-08-12 02:27:10 PM
Control Number - 52322
ItemNumber - 139

DOCKET NO. 52322

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

GOLDEN SPREAD ELECTRIC COOPERATIVE, INC.'S INITIAL STATEMENT OF POSITION

Golden Spread Electric Cooperative, Inc. ("Golden Spread") files this statement of position regarding the Electric Reliability Council of Texas, Inc. ("ERCOT") application for a securitization pursuant to Chapter 39, Subchapter N of the Public Utility Regulatory Act ("PURA") (the "Uplift securitization").

Although it is unlikely Golden Spread will participate in the Uplift securitization as it was able to mitigate the impacts of Winter Storm Uri though alternative financing and rate mechanisms, Golden Spread files this statement of position to emphasize the fact that Subchapter N clearly allows each Load Serving Entity ("LSE") the right to determine whether to seek to participate in the Uplift securitization. The ERCOT Proposal wrongly strips cooperatives, who are LSEs, of this right while retaining it for competitive retailers.[1] This is discriminatory on its face. Golden Spread strongly disagrees with this element of the ERCOT proposal and asks the Commission to apply House Bill ("HB") 4492 as it was written, in a non-discriminatory manner.

[1] "The Uplift Balance excludes any amounts for electric cooperatives that are eligible to securitize under Senate Bill 1580, and it excludes amounts from defaulted entities that are no longer ERCOT market participants." *Application of Electric Reliability Council of Texas, Inc. for a Debt Obligation Order to Finance Uplift Balances Under PURA Chapter 39, Subchapter N, for an Order Initiating Parallel Docket, and for a Good-Cause Exception* (July 16, 2021) ("ERCOT Proposal") at 6.

I. HOUSE BILL 4492 DOES NOT DISCRIMINATE AMONG LSES.

A. The Plain Language of HB 4492 Does Not Support Discriminating Against Cooperatives.

HB 4492, through its plain language, includes electric cooperatives in the definition of load serving entities. Texas places the highest priority on the plain language of a statute in assessing what the Legislature intended. "[T]he plain meaning of the statutory language is presumed to be what the legislature intended, and if the meaning is plain, then the court cannot base its interpretation on any other method or source."[2] HB 4492 plainly and purposely uses the term "LSE" instead of Retail Electric Provider ("REP") as it defines which entities can seek relief through the Uplift securitization. In relevant part, HB 4492 provides:

> The proceeds of debt obligations issued under this subchapter must be used solely for the purpose of financing reliability deployment price adder charges and ancillary service costs that exceeded the commission's system - wide offer cap and were uplifted to ***load-serving entities*** based on consumption during the period of emergency.[3]

If the Legislature wanted to limit accessibility to the Uplift proceeds to only REPs, it could have easily done so. "Retail Electric Provider" is a defined term in PURA and has been for decades.[4] HB 4492, like any statute, should be read with the presumption that words were chosen purposefully.[5] Consequently, it is improper to assume that the Legislature really intended to use "Retail Electric Provider" instead of "Load Serving Entity" as it passed HB 4492.

---

[2] Beal, Ron, *The Art of Statutory Construction: Texas Style*, 64 BAYLOR L. REV. 339, 363-64. Also, statutory language must be construed in light of the entire act. "[W]e are prohibited from plucking words from the statute and reading them in a vacuum. Rather, authority obligates us to read and interpret the statute as a whole." *Tenorio v. State*, 299 S.W.3d 461, 463 (Tex. App.—Amarillo 2009, pet. denied); *see also Ramos v. State*, 264 S.W.3d 743, 750 (Tex. App.—Houston [1st Dist.] 2008), aff'd, 303 S.W.3d 302 (Tex. Crim. App. 2009).

[3] PURA § 39.651(d) (emphasis added).

[4] *See* PURA § 17.002(6). "All statutes are presumed to be enacted by the legislature with full knowledge of the existing condition[s] of the law and with reference to it." *McBride v. Clayton*, 166 S.W.2d 125, 128 (Tex. 1942).

[5] *See Boykin v. State*, 818 S.W.2d 782, 785–86 (Tex. Crim. App. 1991) (en banc).

Load Serving Entity is defined by HB 4492 as "a municipally owned utility, ***an electric cooperative***, or a retail electric provider."[6] HB 4492's definition of load serving entity must not be read to render a portion of the statutory language a nullity.[7] Yet, removing cooperatives from the Uplift securitization proceeds does precisely that by removing cooperatives from the definition of Load Serving Entity at least part of the time.

The ERCOT Proposal relies on the incorrect premise that PURA §§ 39.652(4) and 39.653(i) prevent cooperatives from receiving Uplift securitization proceeds.[8] PURA § 39.652(4) does not include a prohibition on cooperatives receiving Uplift securitization proceeds. In fact, it stands for the opposite. PURA § 39.652(4) states:

> "Uplift balance" means an amount of money of not more than $2.1 billion ***that was uplifted to load-serving entities*** on a load ratio share basis due to energy consumption during the period of emergency for reliability deployment price adder charges and ancillary services costs in excess of the commission's system-wide offer cap***, excluding amounts securitized under Subchapter D, Chapter 41***. The term does not include amounts that were part of the prevailing settlement point price during the period of emergency.

The formula established with the definition of "Uplift balance" provides two express counterpoints to the ERCOT Proposal to exclude cooperatives. First, it uses the defined term "load-serving entities," which expressly includes cooperatives, to set the group of entities used to compute the Uplift balance. Second, it excludes amounts already securitized by cooperatives under Subchapter D, Chapter 41—Senate Bill ("SB") 1580. By including cooperatives as load-serving entities and by including amounts not already securitized under SB 1580, this definition

---

[6] PURA § 39.652(2) (emphasis added).

[7] *See Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000); *see also* Tex. Gov't Code Ann. § 311.021(2).

[8] ERCOT Proposal at 7, fn. 5. It is unclear why the ERCOT Proposal references only Brazos Electric Power Cooperative Inc. ("Brazos") and Rayburn Country Electric Cooperative, Inc. ("Rayburn") in this context, when the ERCOT Proposal would affect every cooperative in ERCOT.

includes reliability deployment price adder charges and ancillary services costs in excess of the commission's system-wide offer cap incurred by cooperatives and not securitized under SB 1580. Given that no cooperative has securitized any amount under SB 1580 yet, the full cooperative amounts fit within the definition of Uplift balance.

Likewise, the other provision cited by the ERCOT Proposal, PURA §39.653(i), prohibits double-counting, not electric cooperative receipt of Uplift securitization proceeds. PURA § 39.653(i) states, "This section does not apply to any ***balance securitized*** under Subchapter D, Chapter 41." For balances not securitized under Subchapter D, Chapter 41, *i.e.*, SB 1580, PURA § 39.653(i) has no effect. The ERCOT Proposal appears to broaden PURA § 39.653(i) to include not only balances securitized (of which there currently are none) but also balances that might someday get securitized in a hypothetical but to-date not actual scenario. The plain language of the statutory provision does not provide for such speculation. If the Legislature intended to limit Uplift balances so that cooperatives were excluded, it would have done so; yet, the plain language clearly shows the contrary.

B. Under the ERCOT Proposal, Cooperatives that Do Not Opt-Out Will Be Required to Subsidize Uplift Securitization for Competitive Retailers.

As crafted, the ERCOT Proposal would guarantee that no cooperative could receive any proceeds from the uplift securitization but, if a cooperative does not opt-out, that cooperative would be required to subsidize the uplift securitization proceeds distributed to competitive retailers. This is illogical and creates the effective certainty that all cooperatives will opt-out in order to avoid being penalized. Under the ERCOT Proposal, a cooperative that remained a participant would receive no benefit from the securitization but would assign that same cooperative a charge for decades to support competitive retailers who did actually receive securitization proceeds. No rational business would agree to make such a donation. In effect, the ERCOT

proposal removes any optionality for cooperatives even though HB 4492 expressly grants cooperatives the right to choose whether to participate.[9] By doing so, this renders a key portion of HB 4492 a nullity, which suggests that it is an improper interpretation of the statute. This peculiar but inevitable result of the ERCOT Proposal would create a market imbalance if cooperatives do not enjoy the same privileges as REPs. Therefore, the ERCOT Proposal should be rejected.

C. One Should Not Compare Existing Cooperatives to Future Competitive Retailers Just Because the ERCOT Proposal Could Cause Both to Pay Toward Repaying the Uplift Charges Without Receipt of Uplift Proceeds.

Existing cooperatives that fail to opt-out will be subject to the same Uplift Charges as future competitive retailers, and neither will receive any benefit from the Uplift proceeds if the ERCOT proposal is adopted as is. However, this is where the similarities between the two groups end. Existing cooperatives have an ongoing obligation to serve their members—a future competitive retailer may choose whether to retail power in ERCOT or not. Existing cooperatives incurred significant costs as a result of Winter Storm Uri—a future competitive retailer, by definition, has not. In fact, existing cooperatives incurred not only extraordinary energy and ancillary services costs but also suffered the costs of physical damage to miles of poles, lines, and other essential facilities. This makes the operational reality of existing cooperatives much more akin to those of existing REPs, who can access Uplift proceeds, than that of a possible future REP that suffered no impact from the Storm. Nonetheless, the ERCOT Proposal would treat existing cooperatives (including the vast majority of whom have paid their bills to ERCOT in full) as though they were not even providing retail service during Uri, *i.e.*, just like a potential future competitive retailer that is only on the drawing board. This makes no sense and should be corrected.

[9] PURA § 39.653(d).

D. Access to Uplift Securitization May Facilitate the Payment of Amounts Owed ERCOT, Relieving Pressure on the Default Balance.

Golden Spread has paid all amounts owed to ERCOT in full, but remains vulnerable to the possible socialization of unpaid default balances as an ERCOT market participant. The current default balance at ERCOT mostly relates to two cooperatives that under the ERCOT Proposal would be ineligible to receive Uplift securitization proceeds.[10] A considerable portion of these default balances relate to amounts that fit the definition of Uplift balance under PURA § 39.652(4). Access to Uplift securitization proceeds for these cooperatives should be used to help repay their respective balances owed to ERCOT. Doing so would comport with the plain language of HB 4492. PURA § 39.651(d) explains that:

> The proceeds of debt obligations issued under this subchapter ***must be used solely*** for the purpose of financing reliability deployment price adder charges and ancillary service costs that exceeded the commission's system-wide offer cap and were uplifted to load-serving entities based on consumption during the period of emergency. A load-serving entity that receives proceeds from the debt obligations ***may use the proceeds solely for the purposes of fulfilling payment obligations*** directly related to such costs and refunding such costs to retail customers who have paid or otherwise would be obligated to pay such costs.[11]

Golden Spread recommends that in addition to allowing cooperatives to fully participate in the Uplift securitization as expressly provided by HB 4492, the Commission designate that Uplift securitization proceeds related to reliability deployment price adder charges and ancillary service costs still owed to ERCOT be retained by ERCOT and netted against the owing LSE's default balance at ERCOT. Consistent with PURA § 39.651(d), this immediate pay-down of default balances "fulfills payment obligations directly related to [those] costs." Further, it helps reduce the amount of default charge exposure on ERCOT's books which should incrementally

---

[10] *See* ERCOT Proposal, Attachment CNA-4 (reporting that Brazos owes ERCOT approximately $1,879,466,498 and that Rayburn owes ERCOT approximately $640,510,035).

[11] PURA § 39.651(d) (emphasis added).

help "stabilize the wholesale electricity market in the ERCOT power region," consistent with PURA § 39.651(c).

II. CONCLUSION

Golden Spread appreciates the remarkable time constraints under which ERCOT had to operate as it developed its Proposal. However, the effects of the Uplift securitization will be felt by ERCOT market participants for decades, making compliance with the plain language of HB 4492 all the more critical. For this reason, Golden Spread urges the Commission to approve the changes to the ERCOT Proposal detailed herein.

Respectfully submitted,

/s/ Todd Kimbrough

Todd F. Kimbrough
Texas Bar No. 24050878
BALCH & BINGHAM LLP
919 Congress Avenue
Suite 1110
Austin, Texas 78701
Telephone: (713) 362-2554
Fax: (866) 258-8980
Email: tkimbrough@balch.com

Maggie Berry
Texas Bar No. 24094541
Associate General Counsel
Golden Spread Electric Cooperative, Inc.
905 S. Fillmore, Suite 300 (79101)
P.O. Box 9898
Amarillo, Texas 79105-5898
Telephone: (806) 349-4069
Fax: (806) 374-2922
Email: mberry@gsec.coop

ATTORNEYS FOR GOLDEN SPREAD ELECTRIC COOPERATIVE, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been made available to all parties of record via filing this document on the Commission's Interchange constituting service of the document on all parties to this proceeding pursuant to Order No. 4.

/s/ Todd Kimbrough
Todd F. Kimbrough