Filing Receipt

Received - 2021-08-12 02:59:05 PM
Control Number - 52322
ItemNumber - 152

PUC DOCKET NO. 52322

APPLICATION OF THE 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 A PARALLEL DOCKET, AND FOR A GOOD CAUSE EXCEPTION	§ § § § § § § §	**BEFORE THE** **PUBLIC UTILITY COMMISSION** **OF TEXAS**

THE COALITION OF COMPETITIVE RETAIL ELECTRIC PROVIDERS' STATEMENT OF POSITION

The Coalition of Competitive Retail Electric Providers (CCR) files this statement of position in the above-captioned proceeding concerning the Application for a Debt Obligation Order under PURA Chapter 39, Subchapter N filed by the Electric Reliability Council of Texas ("ERCOT"). The governing procedural schedules in this proceeding established the deadline to file direct testimony and/or a statement of position as August 12, 2021. Therefore, this position statement is timely filed. The CCR appreciates the extensive efforts of the Administrative Law Judge, ERCOT, Commission Staff, the other intervenors, and the Commissioners in this proceeding.

As reflected herein, the CCR agrees that entry of a Debt Obligation Order with the securitization of $2.1 Billion of uplift balance is consistent with the statutory purpose of stabilizing the wholesale market's financial integrity and is necessary to protect the public interest. Additionally, the CCR takes positions as to and/or contest certain issues related to opt-out parameters and the basis for uplift charge calculation, as set forth below. The CCR will also file direct testimony, and this position statement is offered to facilitate clarifying those issues on which there may be consensus among many parties to this proceeding.

I. STATEMENT of POSITION

A. General Policy

The CCR agrees with ERCOT's statements that entry of the requested Debt Obligation Order to provide for the securitization of $2.1 Billion of will support the financial integrity of the wholesale market and is necessary to protect the public interest. The CCR further agrees that time is of the essence and timeliness is an important given the statutory purpose and language.

B. Opt-Out Parameters

1. The Opt-Out Parameters Need to Be Addressed in the Debt Obligation Order in This Proceeding.

The CCR takes the position that the Debt Obligation Order in this proceeding must set forth the opt-out parameters. Time is of the essence in implementing HB4492, and eligible market participants need to be able to timely assess and decide whether to opt out, pursuant to parameters that have regulatory certainty. Opt outs bear directly on reported exposure, the uplift balance, and the uplift charges, which must be addressed in the Debt Obligation Order. The opt-out parameters should provide guidance as to the current and immediate opt-out requirements, and should also provide regulatory clarity for future load as it comes onto the grid.

2. The Opt-Out Parameters Must Set Forth an Opt-*Out* Process.

It is the CCR position that the opt-out parameters in the Debt Obligation Order must reflect an opt-out process. It is clear that PURA § 39.653(d) expressly requires an "opt out" process for *all* potentially eligible entities, including transmission-voltage customers. PURA § 39.653(d) requires:

> The commission shall develop a one-time process that allows municipally owned utilities, electric cooperatives, river authorities, a retail electric provider that has the same corporate parent as each of the provider's customers, a retail electric provider that is an affiliate of each of the provider's customers, and transmission-voltage customers served by a retail electric provider to **opt out** of the uplift

> charges by paying in full all invoices owed for usage during the period of emergency. Load-serving entities and transmission-voltage customers that **opt out** under this subsection shall not receive any proceeds from the uplift financing.

(emphasis added).

Of key importance to those entities who could receive the funds from the securitization legislation, is that by using an opt out process (as opposed to an opt in process), PURA § 39.653(d) set the default at being able to receive proceeds from the uplift financing and paying the accompanying uplift charges. PURA § 39.653(d) makes clear that the mandate is that "[l]oad serving entities and transmission-voltage customers that *opt out* under this subsection shall not receive any proceeds from the uplift financing." PURA § 39.653(d) does *not* say that load serving entities and transmission customers shall not receive any proceeds from the uplift financing unless they take affirmative steps to opt in.

To impose a unique requirement on any set of potentially eligible entities, such as transmission-voltage customers, that they alone must take affirmative action to opt *in* to HB4492's benefits presents the concern that those entities will, through disparate treatment, inadvertently miss the opportunity to opt in. By setting the standard as "opt out" in PURA § 39.653(d), the Legislature already contemplated, weighed, and decided that, generally, the risks and consequences of inadvertently missing out on the ability to not receive the "uplift charges" by failing to affirmatively opt out, is outweighed by the greater risks and consequences of missing out on the ability to "receive proceeds from the uplift financing" by failing to affirmatively opt in. The affirmative opt out is also necessary to document which load serving entities and transmission level customers in the future will not have the non-bypassable uplift charges applied.

It is important that the Commission establish an approved notice for REPs to provide to transmission voltage customers regarding their potential eligibility to opt out. A proposal for such a notice is included with this position statement as Attachment A.

Thus, it is the CCR position that the Debt Obligation Order must set forth opt-out procedures for all potentially eligible entities, in accordance with PURA § 39.653(d). Any opposite opt-in proposal does not comply with PURA § 39.653(d) and risks depriving potentially eligible entities of the securitization benefits.

3. The Opt-Out Parameters Must Be Confined to Those Entities and Premises in Operation During the Winter Storm.

The opt-out parameters in the Debt Obligation Order must reflect that eligible load serving entities and transmission voltage customers can only opt out once. *See* PURA § 39.653(d) (establishing a "one-time" process). The one-time nature of the opt out process includes confining the opt out to only those load serving entities that were served or serving, and those premises of transmission voltage customers that were served, during the winter storm. In other words, the opt out parameters must reflect a snapshot of the circumstances present at the time of winter storm Uri, and must not create a loophole for new future load to avoid the non-bypassable uplift charges.

As further explanation, the one-time opt-out process is necessary to prevent unfair arbitrage to avoid the non-bypassable uplift charges. As an example, consider a hypothetical involving two transmission voltage customers who are competitors, as follows:

- The first transmission voltage customer is called "Business A." During winter storm Uri, Business A had one (1) premise being served.
- The second transmission voltage customer is called "Business B." In July 2021, Business B comes to Texas and has one (1) premise being served. Business B had zero (0) premises being served during winter storm Uri.

- Business A and Business B are competitors.
- Business A elects to opt out of the uplift charges. Business B is subject to them.
- In 2025, Business A expands its operations in Texas, and adds three new premises to be served.

PURA § 39.653(d) makes clear that the opt out procedures must be "a *one-time*" process, and the above hypothetical highlights why. The uplift charges must apply to Business A's new premises, just as they would apply to all other new premises for other transmission voltage customers, and the opt-out parameters must only allow Business A to opt-out as to the one premise in existence at the time of the winter storm. Otherwise, Business A would receive an unfair competitive advantage over Business B and all its other competitors—in perpetuity—merely because Business A happened to have a one-premise toehold in the market when winter storm Uri occurred in 2021. The purpose of HB4492 and Subchapter N was not to create such disparity for "storm-legacy" businesses, but instead to "allow wholesale market participants who were assessed extraordinary uplift charges due to consumption during the period of emergency to pay those charges over a longer period of time," to "alleviat[e] liquidity issues," and to "reduc[e] the risk of additional defaults in the wholesale market." PURA § 39.651(b). Thus, it is the CCR position that the opt-out parameters must include appropriate clarifications of the one-time opt out.

B. Uplift Charges.

1. The Uplift Charges Should Be Calculated on a per MWh Basis.

The CCR takes the position that the uplift charges should be calculated on a per MWh basis, rather than based on ERCOT's current proposal, which would allocate the charge on a daily basis. Under ERCOT's proposal, each day would bring a different daily settlement invoice, and a different amount. ERCOT's proposal would be very difficult for load serving entities to

implement. Given the non-bypassable nature of the uplift charges, the LSEs are allowed to pass through the uplift charges to the end use customers. However, passing through such daily-changing uplift charges would be very cumbersome and resource intensive.

The CCR proposes an alternative: calculating the uplift charges on a MWh basis. A MWh basis is an existing mechanism that is accommodated in existing billing systems and structures. For example, ERCOT's system administration fee is set on a MWh basis ($0.555 per MWh). Utilizing a MWh basis allows the uplift charges to follow the end-use customer, even when switching retail electric providers, and thus will provide rate stability for customers. In addition, these charges will be in place for all customers for years in the future. They must be structured in a way that can be included in the Electricity Facts Label ("EFL") for residential and small commercial customers. The most straight-forward way to accomplish this is to structure the charges on a per MWh basis (with an annual true-up as discussed below).

A MWh-basis calculation is consistent with Subchapter N and generally consistent with the rest of ERCOT's proposal. ERCOT's daily-change proposal is not necessary to either. ERCOT does not propose how often it will send funds that it collects to the special purpose entity, and only proposes that the special purpose entity will make generally debt payments twice a year to the bond trustee. . The true-up mechanism, which is statutorily required on an annual basis,[1] further renders the daily-change proposal unnecessary. The CCR position on the true-up mechanism is presented in a later subsection.

Further, concerns expressed regarding the volume basis risk can be resolved with periodic true-ups. This is exactly how all other securitizations at the Commission are

[1] PURA § 39.657

formulated.[2] Each of these existing securitizations that have fee structures on a per kWh basis had securitization bonds issued under a AAA rating (the most favorable rating which should provide the lowest interest rate available).[3]

Thus, it is the CCR position that it is essential that the uplift charges should be calculated on a per MWh basis.

2. Four Months of Collateral Is Not Necessary.

The CCR also contests ERCOT's proposal to require four months of collateral for the uplift charges. The CCR instead proposes treating the uplift charges similarly to the System Administration Fee. ERCOT's four-month collateral requirement proposal is unnecessary in light of the non-bypassable nature of uplift charges. As such, the uplift charges will follow the end-use customers and load. Any failure to pay the uplift charges would be addressed in the calculation of exposure under the existing collateral rules. ERCOT does not actually have exposure to four months of these charges under any proposal.

3. The True-Ups Should Be Annual, With Interim True-Ups as Necessary.

The CCR contests a portion of ERCOT's proposal concerning the true-ups. The CCR agrees that a true-up mechanism is needed in the Debt Obligation Order, but propose that the

---

[2] *See, e.g.*, *Application of CenterPoint Energy Houston Electric, LLC for a Financing Order*, Docket No. 37200, Financing Order at 48-54, 119 (Aug. 26, 2009) (per kWh charge with annual true-ups, with interim true-ups as necessary); *Application of AEP Texas Central Company for a Financing Order*, Docket No. 32475, Financing Order at 48-58, 146 (June 21, 2006); *Application of Entergy Gulf States, Inc. for a Financing Order*, Docket No. 33586, Financing Order at ___ (Apr. 2, 2007); *Application of CenterPoint Energy Houston Electric, LLC for Financing Order*, Docket No. 34448, Financing Order at __ (Sept. 18, 2007):

[3] *See, e.g.*, *Application of CenterPoint Energy Houston Electric, LLC for a Financing Order*, Docket No. 37200, Issuance Advice Letter at 4, 6 (Nov. 19, 2009) (reporting AAA ratings and the initial per kWh charges); *Application of CenterPoint Energy Houston Electric, LLC for a Financing Order*, Docket No. 37200, Memorandum to Commissioners Re: Securitization Pricing Levels at 1-2 (Nov. 19, 2009) (reporting that the transaction received an extraordinarily low interest rate and the lowest pricing levels ever achieved in Texas).

true-ups be conducted annually, with interim true-ups as necessary. This is consistent with the annual adjustments that the statute requires.[4] Further, conducting annual true-ups with interims as necessary is consistent with other securitizations approved by the Commission.[5]

As to specifying when interim true-ups may be necessary, the Debt Obligation Order can draw on the language, for example, from the CenterPoint securitization order in Docket 37200, which provides that an interim true-up can be made if:

> (a) the servicer determines that expected collection of . . . charges for the upcoming payment date would result in a difference that is greater than 5% in absolute value, between (i) the actual outstanding principal balances. . . plus amounts on deposit in the excess funds subaccount and (ii) the outstanding principal balances anticipated in the target amortization schedule; or
>
> (b) to meet a rating agency requirement that any tranche . . . be paid in full by its scheduled final payment maturity date.[6]

4. Payment of Proceeds Through the QSEs

ERCOT's application discusses their need to distribute proceeds to QSEs vs LSEs. ERCOT proposes to disperse the proceeds by issuing a miscellaneous invoice for payment to each QSE who represents an LSE that the Commission deems eligible to receive such proceeds. This process would rely upon the QSE to pass these proceeds on to the LSE. The Commission's Order should specifically direct the QSEs to pass through the Uplift Balance financing proceeds to the eligible LSE.

---

4 PURA § 39.657.

5 *See, e.g., Application of CenterPoint Energy Houston Electric, LLC for a Financing Order*, Docket No. 37200, Financing Order at 52-54 (Aug. 26, 2009) (annual true-ups, with interim true-ups as necessary).

6 *Application of CenterPoint Energy Houston Electric, LLC for a Financing Order*, Docket No. 37200, Financing Order at 53 (Aug. 26, 2009).

To the extent an LSE receives proceeds for items that were part of the uplift balance, the Commission order should make clear that the LSE should credit any end user's account for whom those charges passed-through. If the customer has paid the REP for some or all of those charges, the REP shall credit the customer's account for the amount associated with the payments received.

II. CONCLUSION

The CCR appreciates the significant efforts being made by all of those involved in this proceeding. The CCR looks forward to continuing work to implement this new legislation as this proceeding progresses.

Respectfully Submitted,

By: _____

Miguel A. Huerta
State Bar No. 00787733

THE LAW OFFICE OF MIGUEL A. HUERTA, PLLC
7500 Rialto Blvd., Ste. 250
Austin, Texas 78735
512-502-5544 (Telephone)
512-532-0757 (Facsimile)
miguel@mhuertalaw.com

ATTORNEY FOR THE COALITION OF COMPETITIVE RETAILERS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served in accordance with the governing procedural orders to all parties of record in this proceeding on this 12th day of August 2021.

_____

Miguel Huerta