



Filing Receipt

Received - 2021-08-12 03:21:20 PM
Control Number - 52322
ItemNumber - 155

PUC DOCKET NO. 52322

APPLICATION OF THE ELECTRIC	§	
RELIABILITY COUNCIL OF TEXAS,	§	
INC. FOR A DEBT OBLIGATION	§	BEFORE THE
ORDER TO FINANCE UPLIFT	§	
BALANCES UNDER PURA CHAPTER	§	PUBLIC UTILITY COMMISSION
39, SUBCHAPTER N, FOR AN ORDER	§	
INITIATING A PARALLEL DOCKET,	§	OF TEXAS
AND FOR A GOOD CAUSE	§	
EXCEPTION	§	

**JOINT INTERVENORS
STATEMENT OF POSITION**

Intervenors Just Energy,¹ Gexa,² NRG,³ APG&E,⁴ and Southern Federal Power,⁵ (together, “Joint Intervenors”) jointly file 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. Joint Intervenors appreciate the extensive efforts of the Administrative Law Judge, ERCOT, Commission Staff, the other intervenors, and the Commissioners in this proceeding.

As reflected herein, Joint Intervenors agree 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

¹ “Just Energy” collectively refers to Just Energy Texas, LP, which holds REP Certificate No. 10052, Fulcrum Energy d/b/a Amigo Energy, which holds REP Certificate No. 10081, Tara Energy, which holds REP Certificate No. 10051, and Hudson Energy Services, LLC, which holds REP Certificate No. 10092.

² “Gexa” refers to Gexa Energy, LP, which holds REP Certificate No. 10027.

³ “NRG” refers to NRG Energy, Inc. which owns and operates QSEs representing REPs that actively participate in the ERCOT market.

⁴ “APG&E” refers to AP Gas & Electric (TX) LLC, which holds REP Certificate No. 10105.

⁵ “Southern Federal Power” refers to Southern Federal Power LLC, which holds REP Certificate No. 10264.

the wholesale market's financial integrity and is necessary to protect the public interest. Additionally, Joint Intervenors take positions as to and/or contest certain issues related to opt-out parameters and the basis for uplift charge calculation and distribution of proceeds, as set forth below. Many of the Joint Intervenors will also file direct testimony (separately or jointly), 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

Joint Intervenors agree 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. Joint Intervenors further agree that time is of the essence and timeliness is 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.

Joint Intervenors take the position that the Debt Obligation Order in this proceeding must set forth the opt-out timeline and process. 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. The number of entities that choose to opt out and the amount of load those entities serve bear directly on reported exposure, the uplift balance, and the uplift charges, which must be addressed in the Debt Obligation Order. The timeline and manner in which eligible entities must indicate the decision to opt out should provide regulatory clarity.

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

It is Joint Intervenors' 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 nonbypassable 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 Joint Intervenors’ 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.

C. Uplift Charges

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

Joint Intervenors take 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 nonbypassable nature of the uplift charges, the LSEs are allowed to pass through the uplift charges to the end use customers. However, passing through daily-changing uplift charges would be very cumbersome, resource intensive, and may be difficult for customers to understand their bill. In addition, customers will benefit from the stability of a \$/MWh structure

for the uplift charges. This also provides the ability for clear communication with customers regarding these charges to the extent an LSE decides to pass on the charges.

Joint Intervenors propose 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 average prices displayed 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,⁶ further renders the daily-change proposal unnecessary. Joint Intervenors' 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 formulated.⁷ Each

⁶ PURA § 39.657

⁷ 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); see also, e.g., *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

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).⁸

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

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

Joint Intervenors have an alternative recommendation to ERCOT's proposal concerning the true-ups. Joint Intervenors agree that a true-up mechanism is needed in the Debt Obligation Order, but propose that the true-ups be conducted annually, with interim true-ups as necessary. This is consistent with the annual adjustments that the statute requires⁹ and with other securitizations approved by the Commission.¹⁰

Regarding when interim true-ups may be necessary, the Debt Obligation Order can draw on the language, for example, from the CenterPoint Energy securitization order in Docket No. 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

No. 33586, Financing Order (Apr. 2, 2007); *Application of CenterPoint Energy Houston Electric, LLC for Financing Order*, Docket No. 34448, Financing Order (Sept. 18, 2007):

⁸ 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).

⁹ PURA § 39.657.

¹⁰ 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).

(b) to meet a rating agency requirement that any tranche . . . be paid in full by its scheduled final payment maturity date.¹¹

In addition, other triggers for an interim true-up could be included to the extent that ERCOT shows them to be reasonable and necessary. For example, ERCOT has raised concerns regarding the effect of market exits. Although if the \$/MWh fee structure suggested here is adopted, a market exit would not prompt a need for a true-up, language could be included to allow triggers for an interim true-up.

D. Payment of Proceeds Through the QSEs

ERCOT's application discusses their need to distribute proceeds to QSEs versus 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.

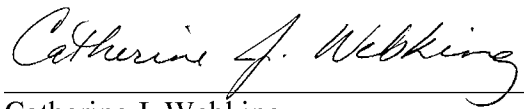
To the extent an LSE receives proceeds for items that were part of the uplift balance, the Commission order should make clear that the LSE should credit any end user's account for whom those charges passed-through. If the customer has paid the REP for some or all of those charges, the REP shall credit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

II. CONCLUSION

Joint Intervenors appreciate the significant efforts being made by all of those involved in this proceeding. Joint Intervenors look forward to continuing work to implement this new legislation as this proceeding progresses.

¹¹ Docket No. 37200, Financing Order at 53 (Aug. 26, 2009).

Respectfully submitted,



Catherine J. Webking
State Bar No. 21050055
cwebking@scottdoug.com
Stephanie Kover
State Bar No. 24102042
skover@scottdoug.com
SCOTT DOUGLASS & MCCONNICO LLP
303 Colorado Street, Suite 2400
Austin, Texas 78701
512.495.6337
512.495.6399 (facsimile)

**ATTORNEYS FOR JUST ENERGY, GEXA,
APG&E, AND SOUTHERN FEDERAL
POWER**

/s/ Tracy Davis
Tracy C. Davis
State Bar No. 24045758
Senior Attorney
NextEra Energy Resources, LLC
5920 W. William Cannon Dr., Bldg. 2
Austin, TX 78749
Office: (512) 236-3141
Facsimile: (512) 236-0484
Email: tracy.c.davis@nexteraenergy.com

Stephen W. Crawford
State Bar No. 05040700
Assistant General Counsel
NextEra Energy Resources, LLC
20455 State Highway 249, Suite 200
Houston, TX 77070
Office: (713) 401-5557
Facsimile: (713) 401-6271
Email: steve.crawford@nexteraenergy.com

ATTORNEYS FOR GEXA ENERGY, LP

/s/ Andrea Stover


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

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

ATTORNEYS FOR NRG ENERGY, INC.

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.

A handwritten signature in black ink, appearing to read 'SK', is written over a horizontal line.

Stephanie Kover

ATTACHMENT A

**PROPOSED OPT OUT NOTICE FOR TRANSMISSION-VOLTAGE LEVEL
CUSTOMERS**

[REP Logo/Name
Address
City, State, Zip]

[Date]

[ATTN: Contact
Customer Name
Address
City, State, Zip]

**RE: NOTICE OF PROCESS TO OPT OUT OF SECURITIZATION UPLIFT
PROCEEDS AND CHARGES – ACTION REQUIRED WITHIN 30 DAYS TO OPT
OUT**

[If possible: Account Number(s): [#####]
ESI ID(s): [#####]

Dear [Customer Contact]:

[REP] hereby provides notice of the ability for [Customer Name], as a transmission-voltage customer, to exercise a one-time election to opt-out of securitization funds. This notice is being provided pursuant to an Order of the Public Utility Commission of Texas (“PUCT”) in Docket No. 52322,¹ as part of its implementation of House Bill 4492² from the 87th Regular Legislative Session.

As you may be aware, costs in the wholesale electricity market significantly increased during Winter Storm Uri, and certain entities and customers were assessed and/or paid reliability deployment price adder charges and ancillary service costs in excess of the PUCT’s system wide offer cap (herein after “certain charges”).

The Texas Legislature recently passed House Bill 4492, establishing a new Subchapter N in the Public Utility Regulatory Act (“PURA”)³ which provides a mechanism for financing an “uplift balance”⁴ not to exceed \$2.1 billion, associated with certain charges incurred during a period of emergency of February 12, 2021 through February 20, 2021 (“period of emergency”).⁵ Under this bill, certain charges assessed during that period to load-serving entities (“LSE”) in the electric market (such as retail electric providers (“REP”)) will be financed, and the proceeds of the

¹ *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*, Docket No. 52322. [Placeholder - Anticipating specific order to cite to.]

² The text of this bill can be viewed at: <https://capitol.texas.gov/>, using the “Search Legislation” function.

³ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016.

⁴ “Uplift balance” is defined in PURA § 39.652(4).

⁵ The legislature found that financing the uplift balance would 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, alleviate liquidity issues, and reduce the risk of additional defaults in the wholesale market.

PROPOSED OPT OUT NOTICE FOR TRANSMISSION-VOLTAGE LEVEL CUSTOMERS

financing paid to those LSEs who were exposed to the costs. The overall financed costs will be repaid over a period not to exceed 30 years, through “uplift charges”⁶ assessed to LSEs, which LSEs may recover from their customers. [Information on expected amounts may be added here when known.]

The Legislature provided for a **one-time ability to Opt Out** for REP customers whose premises are served at transmission-voltage level. These REP customers can opt out of being assessed and paying the uplift charges by paying in full all invoices owed for usage during the period of emergency. If you elect this one time opt out right, for those of your premises served at transmission level, you will not receive any of the proceeds from the uplift financing, and will not be required to pay uplift charges from the securitization under PURA Subchapter N. In other words, if you opt out, you will not receive any refund or credit from your REP for charges you may have paid during the period of emergency for reliability deployment price adder charges and ancillary service costs in excess of the PUCT’s system wide offer cap.

Eligibility and Action Required to Opt Out.

[Customer name] is eligible to opt out if all invoices owed for usage during the period of emergency are paid in full and [Customer name] notifies [REP] that it is exercising its right to opt out. To opt out, [Customer name] must ensure notice, using the attached form, is executed and provided to [REP] in writing at the email listed below within 30 days after the date of this letter.

Following receipt of an Opt Out Notice, [REP] will confirm [Customer name’s] eligibility to opt out, and return a signed copy of the notice. If [Customer name] does not receive acknowledgment of the receipt of the form within two weeks, please contact [REP] to confirm our receipt of the Opt Out Notice.

Please note that it is essential that the [REP] receive the fully executed Opt Out Notice within 30 days of the date of this letter. By law, this opt out option is only available one time. If [customer name] opts out, financing documentation to be filed with the PUCT will be adjusted to reflect this decision.

Please contact us if you have any questions concerning this letter.

Sincerely,

[Signature]

[Printed Name and Position]

[Email for contact.]

[Phone for contact.]

⁶ “Uplift charges” is defined in PURA § 39.652(5).

**PROPOSED OPT OUT NOTICE FOR TRANSMISSION-VOLTAGE LEVEL
CUSTOMERS**

TRANSMISSION-VOLTAGE LEVEL CUSTOMER OPT OUT NOTICE FORM

By submission of this form [Customer Name] exercises its right to opt out of securitization uplift charges under PURA § 39.653(d) for the following account numbers and ESI IDs.

Account Numbers associated with transmission-voltage level service for which the opt out is being exercised.

[Include list here, or provide as attachment.]

Transmission-voltage level ESI IDs associated with the opt out.

[Include list here, or provide as attachment.]

Notice of and Request for Opt Out

By signing below, _____ [Name of Signatory] affirms
_____ [Customer name] has paid in full all invoices owed to [REP] for usage during the period February 12, 2021 through February 20, 2021 (the period of emergency).

_____ [Customer name], as a transmission-level voltage customer, hereby exercises its right under PURA § 39.653(d) to opt out of uplift charges. It is understood that for the above-listed ESI ID(s), _____ [customer name] will not receive any proceeds from the uplift financing under PURA Subchapter N and will not pay uplift charges for same.

This Opt Out Notice is Effective Only if Signed on behalf of the Customer, the current REP of Record, and if different, the REP of Record during period of emergency. The REP of Record during the period of emergency will only sign below if the customer is eligible as a transmission level voltage customer who has paid in full all invoices owed for usage during the period of emergency pursuant to PURA 39.653(d).

[Signatures on following page.]

**PROPOSED OPT OUT NOTICE FOR TRANSMISSION-VOLTAGE LEVEL
CUSTOMERS**

<p>[Customer Name]</p> <p>By: _____</p> <p>Print Name of Signatory: _____</p> <p>Position of Signature: _____</p> <p>Date: _____</p>	
<p>[REP of Record]</p> <p>By: _____</p> <p>Print Name of Signatory: _____</p> <p>Position of Signature: _____</p> <p>Date: _____</p>	<p>[REP of Record during period of emergency]</p> <p>By: _____</p> <p>Print Name of Signatory: _____</p> <p>Position of Signature: _____</p> <p>Date: _____</p> <p><input type="checkbox"/> X if inapplicable</p>