Filing Receipt

Received - 2021-09-01 02:08:57 PM
Control Number - 52322
ItemNumber - 254

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, AND FOR A GOOD CAUSE EXCEPTION	§ § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

CITY OF GEORGETOWN'S CLOSING BRIEF

The City of Georgetown (Georgetown) submits this closing brief. Pursuant to the deadline of September 1st established at the hearing on the merits, this brief is timely filed, and in support Georgetown respectfully shows the following:

I. INTRODUCTION

The Public Utility Commission of Texas (Commission) should issue a debt obligation order that is consistent with the Legislature's intent and the plain language of House Bill (H.B.) 4492. H.B. 4492 amended Chapter 39 of the Public Utility Regulatory Act (PURA) to provide a funding mechanism for alleviating the significant financial burden placed on the Electric Reliability Council of Texas (ERCOT) market as a result of Winter Storm Uri. The Legislature placed a firm cap on the amount of funds available, making it imperative for ERCOT to allocate the proceeds as efficiently as possible. This requires that a load-serving entity (LSE) take any reliability deployment price adder (RDPA) charges in real-time ancillary service imbalance amounts and ancillary service amounts received in excess of the Commission's system-wide offer cap (Offer Cap) and net them against RDPA payments in real-time ancillary service imbalance amounts and the amounts paid in excess of the Offer Cap when documenting exposure to the extraordinary costs accumulated in the market during Uri. Netting the amount of costs incurred by the amount of payments received will give a more accurate picture of each LSE's financial exposure and enable ERCOT to distribute the funds accordingly. The financing must then be repaid by assessing uplift

charges to LSEs on a load ratio share basis. A debt obligation order adhering to these tenants will be more beneficial to the ERCOT market as a whole and will better serve the purpose for creating the uplift financing mechanism.

Additionally, Georgetown respectfully requests that the Commission set a deadline for opting out that is seven days after the deadline to submit documentation on exposure to uplift costs in order to facilitate informed LSE opt-out decisions.

II. BACKGROUND

The 87th Texas Legislature passed H.B. 4492 to create a mechanism for ERCOT to finance up to $2.1 billion for the purpose of addressing the extraordinary costs incurred during Winter Storm Uri and the resulting period of emergency.[1] The statute instructs ERCOT to provide a process for remitting the financing proceeds to LSEs who were "exposed to the costs included in the uplift balance."[2] These uplift costs consist of RDPA charges and ancillary services costs in excess of the Commission's system-wide offer cap.[3] The uplift financing is designed to allow wholesale market participants that incurred uplift costs to pay the charges over a longer period of time, which the statute explicitly contemplates should help alleviate liquidity issues and reduce the risk of additional defaults in the wholesale market.[4] The statute instructs that the corresponding uplift charges will be assessed to LSEs on a load-ratio share basis over a period of time not to exceed 30 years.[5]

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[1] H.B. 4492, 2021 Leg., 87th Sess. (Tex. 2021) at § 39.651.

[2] Tex. Util. Code § 39.653(b)(3).

[3] Tex. Util. Code § 39.652(4).

[4] Tex. Util. Code § 39.651(b).

[5] Tex. Util. Code §§ 39.653(b)(2) and (c).

III. ARGUMENT

A. LSEs must net the amounts paid with any amounts received by the LSE and affiliated entities when documenting exposure to uplift costs.

LSEs must net RDPA charges by RDPA payments in the real-time ancillary service imbalance amounts and amounts paid above the Offer Cap by any amounts received above the Offer Cap by the LSEs and their affiliated entities in order to best serve the purpose of the uplift financing. The uplift financing is designed to address the significant uplift balance causing liquidity issues and risks of default in the ERCOT market. These liquidity issues and defaults resulted from LSEs paying tremendous costs for RDPA charges in the real-time ancillary service imbalance change and paying amounts above the Offer Cap for all hours of the specified period of emergency.[6] ERCOT's current estimate of these costs totals approximately $3.42 billion.[7] Conversely, ERCOT's estimate of the corresponding RDPA payments and ancillary services payments in excess of the Offer Cap totals approximately $3.71 billion.[8] This means that if a LSE had an affiliate or some other mechanism allowing it to receive a portion of these payments, the LSE might not have been exposed to and adversely affected by the extraordinary prices at issue because it could have offset the charges incurred by the payments received.

Allowing LSEs in this position to take full advantage of the proposed financing would not effectively alleviate the liquidity issues or default risks weighing on the overall market. It would only reduce the already limited funds available to those LSEs actually in need. This outcome is unacceptable given the clear intent of H.B. 4492, as described by Lieutenant Governor Dan Patrick

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[6] The Period of Emergency is defined as the period beginning 12:01 a.m., February 12, 2021, and ending 11:59 p.m., February 20, 2021.

[7] ERCOT's Response to NRG Energy, Inc.'s First Request for Information at 4 (Aug. 2, 2021).

[8] *Id.* at 6.

in his August 16, 2021 letter.[9] Lieutenant Governor Patrick explained that financing proceeds for excess RDPA and ancillary service costs during the storm incurred by LSEs *should* be offset by RDPA and ancillary service revenues *received* by LSEs' affiliated resource entities.[10] An August 10 joint letter from twenty state senators advocates a similar interpretation.[11] Further, Commission Staff's filing from August 4 states that H.B. 4492 "does contemplate offsetting the amounts for reliability deployment price adder charges and ancillary service costs in excess of the commission's system-wide offer cap (collectively, Extraordinary Costs) with payments received for those same services."[12]

And in the state senate's debate of the bill, Senator Kelly Hancock, the bill's senate sponsor, clearly stated that "it is a net amount, it's not the gross of what was total," confirming that the $2.1 billion reflects the net amount of ancillary services costs and RDPA charges that are owed to ERCOT and eligible to be financed using the relevant pre-existing law.[13] Thus, as Commission Staff has urged, "the Commission should determine the exposure of the market participants that will receive financing on a net basis. . . . [O]therwise, there is a substantial risk that the amount of exposure documented by . . . [LSEs] will exceed the $2.1 billion."[14]

Accordingly, as advocated by a chorus of legislators and staffers, the exposure documentation must therefore include an offsetting of payments received to avoid unjustly enriching LSEs that were not adversely affected by the uplift costs.

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[9] *See e.g.* Lieutenant Governor Dan Patrick's Letter to the Commissioners (Aug. 11, 2021) (stating "House Bill 4492 had no reason to exist other than to provide relief for ERCOT market participants who were adversely affected by exorbitant ancillary service prices").

[10] *Id.*

[11] Senator Charles Schwertner et al., Letter on legislative intent of H.B. 4492 (Aug. 10, 2021).

[12] Commission Staff's Response to Order Requesting Briefing at 1 (Aug. 4, 2021).

[13] S.J. of Tex., 87th Leg., R.S. 2162–73 at 2:56:25–2:57:25 (2021).

[14] Commission Staff's Response to Order Requesting Briefing at 4 (Aug. 4, 2021).

B. The netting offset should include power purchase agreements and financial transactions outside of ERCOT settlement.

Knowing how much an LSE received in payments during the period of emergency will allow ERCOT to distribute the financing proceeds in a manner more beneficial to the market as a whole. For a fully accurate assessment of this total, LSEs should document all amounts received from their owned resources, power purchase agreements, and financially settled contracts outside ERCOT settlement for energy, capacity, and ancillary services due to real-time ancillary service imbalance payments and ancillary service payments above the Offer Cap for all hours during the period of emergency. For example, if an LSE received real-time ancillary service imbalance payments for its owned resources or power purchase agreements, then the RDPA portion of these payments should be applied to offset any RDPA portion of the real-time ancillary service imbalance charges paid by the LSE. Similarly, if the LSE received ancillary service payments above the Offer Cap for its owned resources, power purchase agreements, or financially settled contracts, then the payments exceeding the Offer Cap should be applied to offset any ancillary service charges above the Offer Cap paid by the LSE. This is the only way to get an accurate look at the financial burden each LSE really faces as a result of the uplift costs. With limited funds available, such accuracy is crucial for ERCOT to achieve the greatest overall benefit out of the uplift financing mechanism.

C. The payment liability for uplift costs must be based on a LSEs load-ratio share.

Certain intervenors have suggested that if netting applies in determining the amount of proceeds a LSE will receive, then netting should also apply when determining each LSEs liability for uplift charges.[15] However, unlike the phrase "exposed to the costs included in the uplift" used

[15] *See e.g.* Direct Testimony of Amanda J. Frazier at 41:15-43:4.

for remitting the financing proceeds, there is no ambiguity in the language for how to assess the uplift charges.[16] The text of PURA § 39.653(c) plainly states that uplift charges shall be assessed to "all load-serving entities on a load ratio share basis." Assessing uplift charges based on net exposure would therefore contradict the clear statutory language. Furthermore, as Commission witness Carrie Bivens testified, it is unclear from a practical standpoint how LSEs could even be assessed liability for uplift charges based on net exposure.[17] Therefore the payment liability for uplift costs must be based on a LSE's load ratio share as clearly expressed in the language of H.B. 4492, regardless of whether netting applies in determining the amount of proceeds a LSE will receive.

D. If the total exposure exceeds $2.1 billion, then the uplift financing proceeds should be prorated to LSEs based on their exposure.

ERCOT's current estimate of the total market exposure to uplift costs strongly suggests that the financing proceeds of the debt obligation order will need to be prorated. This proration must be done based on a LSE's documented exposure rather than any amount passed on to customers. Although Commission witness Carrie Bivens initially suggested prorating amounts to LSEs based on the costs passed through to end-use customers,[18] during cross-examination, she acknowledged clear flaws with this method, as some LSEs might not have passed through any uplift costs to their customers.[19] Ms. Bivens agreed that these LSEs should still be eligible to

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[16] *See* Tex. Util. Code §§ 39.653(b)(3) and (c).

[17] Docket No. 52322 Hearing on the Merits, Cross-Examination of Carrie Bivens at 2:13:36–2:14. (Aug. 25, 2021).

[18] Direct Testimony of Carrie Bivens at 19:6–20:10.

[19] Docket No. 52322 Hearing on the Merits, Cross-Examination of Carrie Bivens starting at 1:44:00. (Aug. 25, 2021).

receive uplift financing proceeds, and that modifying her initial recommendation would likely better serve the purpose of preventing defaults and alleviating liquidity issues in the market.[20]

The simplest way to do this is by using a proration method that is based purely on a LSE's documented exposure. This means if the total exposure exceeds $2.1 billion, ERCOT would take the percentage of the total that $2.1 billion represents and distribute proceeds to each LSE in an amount equal to that same percentage of each LSE's documented exposure. Ms. Bivens agreed during cross-examination that this would be a reasonable approach.[21] Any other method would be an unfair and inequitable distribution.

E. Set a deadline for opting-out that is seven days after the deadline to submit documentation on exposure to uplift costs.

For LSEs to make informed decisions, the deadlines for opting out and for submitting documentation on exposure to uplift costs should not be on the same day. Georgetown instead requests that the deadline for opting out be seven days after the deadline for documenting exposure, although LSEs that have already decided to opt out should not be required to document exposure. This would provide LSEs time to evaluate all the exposure filings and better assess their potential liability for uplift charges. The LSEs could then make a more informed decision on whether to opt out. This extension would not affect the contemplated timeline for ERCOT to complete its review of the exposure filings, and still provides plenty of time to calculate and file the total amount to be financed by December 30, 2021.

For these reasons, Georgetown respectfully requests that the Commission set a deadline for opting-out that is seven days after the deadline to submit documentation on exposure to uplift costs.

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[20] *Id.* starting at 1:44:00 and at 2:02:00.

[21] *Id.* at 1:59:15–1:59:51.

III. CONCLUSION

The purpose of the uplift financing is to address the uplift balance and provide liquidity to financially distressed LSEs. The Commission's debt obligation order should prorate the uplift financing proceeds based simply on each LSEs documented exposure to the uplift costs. The Commission should insist that LSEs offset the amounts paid in excess of the Commission's system-wide offer cap by amounts received in excess of the Commission's system-wide offer cap when documenting this exposure, as a host of legislators have expressed. The payment liability for the uplift financing should then be assessed to LSEs on a load ratio share basis. All together, this will ensure the Commission's debt obligation order conforms to the language of H.B. 4492 and best addresses the liquidity issues and risks of default in the ERCOT market. In addition, a deadline for opting-out that is seven days after the deadline to submit documentation on exposure to uplift costs will facilitate informed LSE opt-out decisions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Order No. 2 in this docket, filing a document on the Commission's Interchange website constitutes service of the document on all parties to this proceeding.

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