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

EDF ENERGY SERVICES, LLC’S POST-HEARING INITIAL BRIEF

EDF Energy Services, LLC (“EDFES”) files the following post-hearing initial brief in accordance with the Administrative Law Judge’s (ALJ) order on August 25, 2021. The ALJ set September 1, 2021, as the deadline for Initial Briefs¹ and, therefore, this Brief is timely filed.

I. EXECUTIVE SUMMARY

A brief summary of EDFES’s arguments is provided below, and then a more thorough analysis supporting EDFES’s positions follows:

- EDFES supports ERCOT’s request for approval of a Debt Obligation Order to securitize \$2.1 billion dollar of uplift balances. EDFES also generally supports the implementation details included in ERCOT’s application, including the recommendation to utilize a parallel docket to enable parties to opt-out or document exposure to eligible costs. Minor revisions to ERCOT’s proposed order are described in this Post-hearing Initial Brief.
- EDFES does not take a position on whether the Public Utility Commission of Texas (“Commission”) should use “netting” in quantifying a load serving entity’s (LSE) exposure to uplift charges. However, to the extent netting is used, EDFES urges the Commission to narrowly apply such netting to avoid discriminating against customers.
- To ensure all eligible opt-out entities receive consistent and accurate information concerning their ability to opt out, EDFES recommends the Commission approve a standard notice for retail electric providers (REP) to provide to transmission-voltage customers concerning their potential eligibility to opt out. A form notice adopted by the Commission will ensure that all customers are adequately and consistently informed of the ability to voluntarily opt out, along with the eligibility requirements and consequences of opting out.
- EDFES recommends that uplift charges be assessed on a volumetric basis (per megawatt hour) and applied in the same manner that ERCOT currently applies the ERCOT system administration fee. This approach would align well with typical ERCOT settlements, is currently used in ERCOT’s and Qualified Scheduling Entities’ (QSE) systems, and is the clearest way for retail customers to understand how much they will be charged each month. Use of a MWh basis also avoids the

¹ Tr. at 373:5-6 (ALJ Burkhalter) (Aug. 25, 2021).

cumbersome implementation process, issues regarding the uncertainties of forecasting, and the time intensive monitoring by LSEs that would be required under ERCOT's proposal to allocate non-volumetric charges on a daily basis.

- EDFES generally supports the position articulated by Tenaska Power Service Co. ("TPS") in its Statement of Position that the Commission's order in this proceeding make it clear that QSEs are not personally liable for uplift charges and payment obligations remain with LSEs. EDFES believes that the Debt Obligation Order can contain ordering provisions that comply with HB 4492, protect QSEs, and appropriately make the uplift charges the responsibility of LSEs without complex changes to ERCOT's systems and processes.

II. ARGUMENT

A. Introduction and Policy Considerations

1. EDF Energy Services Serves Multiple Roles in ERCOT.

EDFES is registered with ERCOT as a Qualified Scheduling Entity (QSE), Congestion Revenue Rights Account Holder (CRRAH), and Load Serving Entity (LSE), and regularly participates and represents market participants in the ERCOT market. In addition to its activities as a retail electric provider (REP) (i.e., an LSE), EDFES—like Tenaska Power Services Co. ("TPS")—serves as a third-party QSE service provider for a substantial number of market participants (e.g., generation facilities, LSEs, loads acting as resources) that are not affiliated with EDFES. EDFES provides scheduling, energy management, settlement, and administrative services to these entities. Indeed, EDFES provides third-party QSE and energy management services to dozens of ERCOT customers.

2. EDFES Generally Supports ERCOT's Application.

EDFES supports ERCOT's request for approval of a Debt Obligation Order to securitize \$2.1 billion dollar of uplift balances. EDFES also generally supports the implementation details included in ERCOT's application, including the recommendation to utilize a parallel docket to enable parties to opt-out or document exposure to eligible costs.

3. Netting, if Applied, Should be Narrowly Tailored.

EDFES did not file a brief or comments on the issue of corporate netting but believes that, to the extent the Commission orders netting in quantifying an LSE's exposure to uplift charges, such netting should be narrowly tailored to avoid potentially negative consequences and bad public policy outcomes.²

² See generally Tenaska Power Service Co.'s Statement of Position (Aug. 12, 2021). See also Shell Energy North America (US) LP's Response to Commission Order Requesting Briefing at 3 (Netting "potentially requires an LSE's affiliates, some of whom may not have the same ownership group as the LSE or its end use customers, to finance [Uplift Costs]") (Aug. 4, 2021); see also Direct Testimony of Carrie Bivens, Staff Ex. 2 at 19, note 10 (distinguishing the corporate LSE netting advocated by Staff in

In particular, a Commission decision that mandates broad netting principles could lead to unjust results for retail customers. These outcomes would be driven, in part, by PURA § 39.660, which requires that an LSE that receives proceeds from the securitization must adjust customer invoices to reflect those payments and, if necessary, provide a refund to the customer for charges that were previously paid.

There are at least two scenarios in which insufficiently narrow netting principles could harm customers. First, for example, a large percentage of EDFES's retail customers are large industrial or commercial customers who have agreed to have all ERCOT load-related settlements (including Real Time Deployment Price Adder ("RDPA") and ancillary service charges) passed through to them. Most of these customers have already paid in full all RDPA and ancillary service charges that were passed through to them for service during Winter Storm Uri. Thus, in accordance with PURA § 39.660, EDFES expects to refund to these customers proceeds it receives through the securitization in this case to offset the charges the customers have previously paid. Limiting the available proceeds to EDFES due to application of overly broad netting concepts based on unrelated activities of an affiliated generation entity would be unjust to both the LSE and its customers.³

Second, netting at the QSE level would be inappropriate and unduly discriminatory to customers who are served by an LSE that is represented by a QSE that also serves unaffiliated generation. In this situation, netting at the QSE level would deprive an LSE and that LSE's retail customer of proceeds to which it might be otherwise entitled simply because the QSE also provides third-party QSE services to generation unaffiliated with the load.⁴

In both cases, the harm can be mitigated by not reducing an LSE's allocation of proceeds if that LSE has passed through (or has the right or obligation to pass through) uplift charges to load customers.

this proceeding with the counter-party netting described by the Independent Market Monitor in February 2021); Tr. at 315:17-316:7 (Bivens Cross) (Aug. 25, 2021).

³ See Direct Testimony of William Berg, Exelon Ex. 1 at 10-12; see *also* Tenaska Power Services Co.'s Response to Commission Order Requesting Briefing at 2-3 (Aug. 4, 2021). Any funds received by an LSE could also be used to offset claims against a customer's bad debt. Direct Testimony of Steven Schleimer, Calpine Ex. 1 at 5:17-18, 6:21-24.

⁴ See Direct Testimony of William Berg, Exelon Ex. 1 at 10-12; see *also* Shell Energy North America (US) LP's Response to Commission Order Requesting Briefing at 3 (Aug. 4, 2021); Tenaska Power Services Co.'s Response to Commission Order Requesting Briefing at 3 (Aug. 4, 2021); Calpine Corporation's Response to Briefing Order at 3-4 (Aug. 4, 2021); see *also* Tenaska Power Service Co.'s Post-hearing Brief at 3 (Sep. 1, 2021).

B. The Opt-out Process Should be Easy to Understand and Consistently Applied.

EDFES agrees with the Commission's August 19, 2021 order in which the Commission determined that it will address in this docket the opt-out process and the documentation required to allow transmission-voltage customers served by a REP to opt out of the uplift charges by paying in full all invoices owed for usage during the Period of Emergency.⁵ The number of entities that choose to opt out, the time in which the entities have to opt out, as well as the amount of load those entities serve all directly impact the uplift balance that needs to be securitized and the uplift charges that need to be collected.⁶

To ensure all eligible opt-out entities receive accurate and consistent information concerning their ability to opt out, EDFES recommends the Commission approve a standard notice for REPs to provide to transmission-voltage customers concerning their potential eligibility to opt out.⁷ A form notice adopted by the Commission will ensure that all customers are adequately and consistently informed of the ability to voluntarily opt out.⁸ The notice also could advise customers that if they are eligible to opt out (e.g., by having paid in full all invoices owed for usage during the period of emergency), they will not receive securitization proceeds but also will not be assessed uplift charges.⁹

C. ERCOT Should Assess Uplift Charges on a Volumetric Basis.

EDFES recommends that uplift charges be assessed on a volumetric basis (per megawatt hour) and applied in the same manner that ERCOT currently applies the ERCOT system administration fee.¹⁰ EDFES recommends that the allocation be based on eligible real-time adjusted meter load (RTAML) and adjusted as necessary as part of the approved true-

⁵ See Order Severing Issues (Aug. 19, 2021). See also Direct Testimony of Rebecca Zerwas, Staff Ex. 3 at 5:24-6:6.

⁶ See Joint Intervenors' Position Statement of Position at 2 (Aug. 12, 2021).

⁷ See Direct Testimony of Rebecca Zerwas, Staff Ex. 3 at 9:19-20; Direct Testimony of William Berg, Exelon Ex. 1 at 14; Amended Direct Testimony of Bill Barnes, NRG Ex. 1 at 12. See also Joint Intervenors Statement of Position at 4 and Attachment A (Aug. 12, 2021).

⁸ See Amended Direct Testimony of Bill Barnes, NRG Ex. 1 at 12:4-13; Rebuttal Testimony of Kenan Ögelman, ERCOT Ex. 7 at 18:16-17. See also Joint Intervenors' Position Statement of Position at 4 and Attachment A (Aug. 12, 2021).

⁹ See PURA § 39.653(d); Direct Testimony of Rebecca Zerwas, Staff Ex. 3 at 11:5-25; Direct Testimony of Steven Schleimer, Calpine Ex. 1 at 3:16-18; Direct Testimony of Charles Griffey, TIEC Ex. 1 at 6.

¹⁰ See Direct Testimony of Lori Simpson, Exelon Ex. 2 at 4-5; Amended Direct Testimony of Bill Barnes, NRG Ex. 1 at 5:12-16, 10:24-28.

up process.¹¹ This approach would align well with typical ERCOT settlements.¹² The MWh basis is used today in ERCOT's and QSEs' systems, and is the clearest way for retail customers to understand how much they will be charged each month. Use of a MWh basis also avoids the cumbersome implementation process, issues regarding the uncertainties of forecasting, and the time intensive monitoring by LSEs that would be required under ERCOT's proposal to allocate non-volumetric charges on a daily basis.¹³

If the Commission elects to approve ERCOT's use of a daily uplift charge (as opposed to a volumetric charge), then EDFES requests that ERCOT be required to publish each LSE's eligible load and load research sampling (LRS) used in calculating the daily uplift balance to allow QSEs and LSEs to confirm the charges before passing them through to customers.

D. The Commission Should Clarify that LSEs are the Entities Responsible for Uplift Charges.

EDFES generally supports the position articulated by TPS in its Statement of Position that the Commission's order in this proceeding must make it clear that QSEs are not personally liable for uplift charges and that such responsibility lies with LSEs.¹⁴ As stated in TPS's pleading:

TPS proposes that, to comply with PURA Section 39.653(c), the Debt Obligation Order be revised to:

1. Impose directly upon Load Serving Entities the assessment of Uplift Charges, as expressly required by PURA Section 39.653(c).
2. Clarify that QSEs shall serve as ERCOT's administrative and collection agent to (a) determine the amount of Uplift Charges to be allocated to each Load Serving Entity on a daily basis pursuant to the "Uplift Charges Assessment Methodology" described by ERCOT in paragraph 56 of its proposed Debt Obligation Order, and (b) collect the amount of determined Uplift Charges from each Load Serving Entity.
3. Clarify that QSEs are not personally liable for Uplift Charges but are only responsible for performing their obligations as administrative and collection agents in good faith.
4. Impose penalties, including a forfeiture of the right to continue participation in ERCOT, upon Load Serving Entities that fail to pay

¹¹ See Amended Direct Testimony of Bill Barnes, NRG Ex. 1 at 10:16-21.

¹² See Direct Testimony of Michael Carter, JE Ex. 1 at 12-13.

¹³ See Amended Direct Testimony of Bill Barnes, NRG Ex. 1 at 11:3-6; Direct Testimony of Michael Carter, JE Ex. 1 at 9-10. See *also* Joint Intervenors' Position Statement of Position at 4-5 (Aug. 12, 2021).

¹⁴ See Tenaska Power Service Co.'s Statement of Position (Aug. 12, 2021); see *also* Docket No. 52321, Tr. at 60:2-61:9 (Opening Statement of TPS) (Aug. 23, 2021).

their assessed Uplift Charges.¹⁵

Modifications to ERCOT's proposed Debt Obligation Order—similar to the ones proposed by TPS—are necessary to ensure the Commission's order complies with PURA § 39.653(c), which requires that uplift charges be assessed against LSEs. As a practical matter, these clarifications are also important given the nearly thirty-year period over which the securitized uplift charges will be collected.

ERCOT argues that it has concerns with TPS's proposal because "ERCOT is structured to only impose financial responsibility for market activity on QSEs and CRR Account Holders, [and] ERCOT's existing processes do not allow ERCOT to terminate an LSE due to nonpayment for market activity."¹⁶ However, other than proposal 2(b) above, the Commission's order can make these clarifications without requiring ERCOT to make any changes to its systems. In particular, the Commission has authority to (a) order explicitly that the uplift charges are the responsibility of LSEs, (b) clarify that QSEs, as ERCOT's designees, effectively serve as administrative and collection agents for the uplift charges under existing settlement processes, (c) clarify that QSEs are not personally liable for uplift charges, and (d) impose penalties on an LSE that fails to pay their assessed uplift charges.

In addition to these Commission ordering provisions, ERCOT has authority under its Standard Form Market Participant Agreement (SFA) and ERCOT Protocol Section 16.11.6.1 to terminate the SFA with any LSE for nonpayment of an obligation owed to ERCOT, or its designee. Section 8(A)(1) of the SFA contains the following language:

Failure by Participant to (i) pay when due, any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any agreement with ERCOT ("Payment Breach"), or (ii) designate/maintain an association with a QSE (if required by the ERCOT Protocols) ("QSE Affiliation Breach"), shall constitute a material breach and event of default ("Default") unless cured within one (1) Bank Business Day after ERCOT delivers written notice of the breach to Participant.... (Emphasis added.)

Additionally, ERCOT Protocol Section 16.11.6(3) provides, in relevant part:

The failure of a Market Participant to pay when due any payment or Financial Security obligation owed to ERCOT or its designee, if applicable, under any agreement with ERCOT, is an event of "Payment Breach." ... Any Payment Breach by a Market Participant under any agreement with ERCOT is a Default under all other agreements between ERCOT and the Market Participant.... (Emphasis added.)

¹⁵ Tenaska Power Service Co.'s Statement of Position at 4 (Aug. 12, 2021).

¹⁶ Rebuttal Testimony of Kenan Ögelman, ERCOT Ex. 7 at 29:4-9.

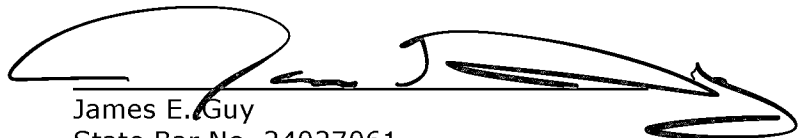
Consequently, the Commission's order could provide that for purposes of the SFA and uplift charges, a QSE would be considered "ERCOT's designee" and an LSE's obligation to pay uplift charges would be deemed a "payment owed under the SFA." As a result, an LSE's failure to pay its uplift charges to its QSE—and the QSE's communication to ERCOT that a payment deadline has been missed—would give ERCOT the mechanism by which it could find that a Payment Breach has occurred, and an LSE has materially breached the SFA. The material breach would constitute a Default under the SFA (and "all other agreements between ERCOT and the Market Participant") unless the LSE pays the amounts owed within the time allowed by the protocols.

ERCOT Protocol Section 16.11.6.1 describes remedies that are available to ERCOT in the event of a Payment Breach or Default. These remedies including those under Protocol Section 16.11.6.1.6(1) (revoking a breaching market participant's rights to conduct activities under the protocols and terminating the breaching market participant's agreement with ERCOT) and Protocol Section 16.11.6.1.6(3) (authorizing ERCOT to initiate a mass transition of an LSE's ESI IDs). The ERCOT systems to implement these remedies are already in place.

III. CONCLUSION AND PRAYER

For the reasons stated above, EDFES respectfully requests the Commission approve ERCOT's application for a Debt Obligation Order to securitize \$2.1 billion dollar of uplift balances, with the changes described herein, and grant EDFES such other relief to which it is entitled.

Respectfully submitted,



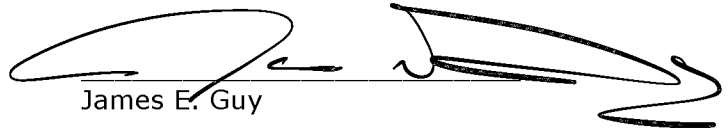
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September 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that in accordance with Order No. 2, a copy of this document has been filed on the Commission's Interchange and such filing constitutes service of the document on all parties in this proceeding on the 1st day of September, 2021.



James E. Guy