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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**

ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.'S POST-HEARING BRIEF

Electric Reliability Council of Texas, Inc. ("ERCOT") submits its Post-Hearing Brief concerning ERCOT's Application for a Debt Obligation Order pursuant to Chapter 39, Subchapter N (the "Application") of the Public Utility Regulatory Act ("PURA").[1]

SUMMARY

ERCOT's Application and the evidence presented to the Public Utility Commission of Texas ("Commission") meet all the requirements of PURA for the Commission to enter ERCOT's proposed Debt Obligation Order. Many of the Intervenors dispute how the proceeds of the financing should be divided, who should receive them and in what amounts, and how and when they should be able to opt out of Uplift Charges. But none of the Intervenors argue that ERCOT's request should be denied or that ERCOT failed to carry its burden. Indeed, Commission Director of Rate Regulation, Daryl Tietjen—who has participated in every single PUC proceeding involving securitization financing[2]—testified that "Commission approval and implementation of ERCOT's proposal would pass the statutory tests set forth in PURA §§ 39.651(e) and 39.653(a)."[3]

[1] PURA is codified in Title II of the Texas Utilities Code. Tex. Util. Code §§ 11.001 – 66.016.

[2] Staff Ex. 1 (Tietjen Dir.) at 6:4-12.

[3] *Id.* at 11:11-12.

ERCOT addresses several issues in its Post-Hearing Brief: First, how it believes the Commission should address the Legislature's intent for defaulted electric cooperatives based on the overall securitization legislation.[4] Second, why ERCOT's proposal to assess Uplift Charges based on a flat monthly amount should be adopted, and why certain Intervenors' request for a $/MWh charge should be rejected. Third, why ERCOT should not be saddled with the responsibility of documenting exposure for Load Serving Entities ("LSE") contrary to the plain language of the statute. Fourth, why the Commission should not deviate from the existing ERCOT market structure in which ERCOT financially transacts only with QSEs and CRR Account Holders. Finally, ERCOT provides information requested by the Commissioners, clarifies some factual data, and provides its recommended next steps to help ensure a timely and successful securitization to alleviate market liquidity issues and reduce the risk of additional defaults in the wholesale market.

ARGUMENT

I. Securitization under HB 4492 and SB 1580 should be considered as a whole.

When read together, HB 4492 and SB 1580 demonstrate a clear legislative intent:

- HB 4492 – Chapter 39, Subchapter M. The Legislature created Subchapter M of Chapter 39 because it recognized ERCOT was unlikely to recover money from the terminated Retail Electric Providers ("REP"). That is why it authorized the use of Comptroller funds to expeditiously help with market liquidity and ensure more timely payment to the market participants short-paid by those defaults. It also recognized that Congestion Revenue Right ("CRR") auction funds *temporarily* used to alleviate short payments need to be replenished to prevent future liquidity problems.

- HB 4492 – Chapter 39, Subchapter N. The Legislature created Subchapter N of Chapter 39 because it recognized Texas customers and their LSEs have suffered from high costs caused by Winter Storm Uri, so it created a $2.1 billion program to finance those costs at the lowest rate and pay that back over 30 years.

[4] Act of May 30, 2021, 87th Leg., R.S. ("HB 4492"); Act of May 28, 2021 87th Leg., R.S. ("SB 1580").

- SB 1580, Chapter 41, Subchapter D. The Legislature created Subchapter D of Chapter 41 to provide all electric cooperatives the option to pursue their own securitization, but it commanded those cooperatives[5] that still owe ERCOT amounts from the winter storm to securitize those amounts under their own securitization statute.[6]

- HB 4492 – Chapter 39, Subchapter D. Market Participants that fail to pay should not be allowed to continue to participate in the market, no matter what type of participant they may be.[7]

The Commission must adopt an approach that reads these statutes together and harmoniously.[8] While some Intervenors parse particular words and phrases that align with their self-interests, the Commission should consider what is best for the market as a whole. The best result for the market is for Rayburn to successfully securitize under SB 1580 and pay its debts[9] so that the Commission is not put in the position of implementing the final piece of the Legislature's plan.

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[5] The electric cooperatives that owe ERCOT amounts from the storm are Rayburn Country Electric Cooperative, Inc. ("Rayburn") and Brazos Electric Power Cooperative, Inc. ("Brazos"). Brazos did not intervene in this proceeding, but the legislative intent behind SB 1580 is the same for Rayburn and Brazos.

[6] PURA § 41.151(b) requires that a cooperative that owes ERCOT amounts from the storm "**shall** use all means necessary to securitize" those amounts. (emphasis added).

[7] PURA § 39.159(b) provides, "The commission may not allow the defaulting market participant to continue to be a market participant in the ERCOT power region for any purpose or allow [ERCOT] to accept the defaulting market participant's loads or generation for scheduling in the ERCOT power region until all amounts owed to [ERCOT] by the market participant as calculated in this section are fully paid."

[8] It is a bedrock principle of statutory construction that two potentially conflicting statutes should be harmonized whenever possible as to give effect to both. *See In re Mem'l Hermann Hosp. Sys.*, 464 S.W.3d 686, 716 (Tex. 2015) ("To the extent possible, we will construe the different provisions in a way that harmonizes rather than conflicts.").

[9] Rayburn's lawyers will likely reply that Rayburn disputes the amount of its debt. But there is an existing legal process for that. Protocol Section 9.6(2) provides that payments must be made timely whether or not there is any billing dispute, and Protocol Section 9.14 provides the process by which a party can dispute its invoices. And in fact, there are market participants who have done just that, including many of the Intervenors. The Commission should give no credence to Rayburn's argument that it is not in "Default," or that Force Majeure excuses its non-payment. As ERCOT testified, it has exercised its discretion and foregone sending a formal payment breach—as it has been authorized by the Commission to do to try to work with Rayburn. *See Order Directing ERCOT to Take Action and Granting Exception to ERCOT Protocols*, Docket No. 51812-7 (Feb. 21, 2021) (authorizing ERCOT to, among other things, "suspend breach notifications to certain market participants."). The Standard Form Market Participant Agreement in Protocol Section 22A provides in Section 8(C)(2) that "a Force Majeure Event does not relieve a Party affected by a Force Majeure Event of its obligation to make payments . . . ." Rayburn failed to timely pay its invoices. It is therefore in payment breach. Sending a formal notice will only result in Rayburn filing bankruptcy, and that is not best for the market when the Legislature provided Rayburn a path to absolution in SB 1580.

Sophisticated securitizations take time to implement.[10] Expecting Rayburn to utilize the tools the Legislature provided to it under SB 1580, the Legislature also made clear that it did not intend for Rayburn's winter storm costs to be part of the Uplift Balance securitized under Subchapter N:

> "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.**

PURA § 39.652(4) (emphasis added). While Rayburn's securitization is not yet concluded, the intent is clear that its costs are not part of the Uplift Balance.

ERCOT, as mandated by statute, filed its Application under PURA § 39.653. Rayburn is simply not eligible to participate in ERCOT's § 39.653 debt financing mechanism. Its costs are not part of the Uplift Balance by definition. It is, therefore, not one of the LSEs entitled to receive Subchapter N proceeds:

> (b) An order issued under this section [39.653] must: . . . (3) provide the process for remitting the proceeds of the financing **to load-serving entities who were exposed to the *costs included in the uplift balance***, including a requirement for the load-serving entities to submit documentation of their exposure.

PURA § 39.653(b)(3). Because Rayburn's costs are not "included in the uplift balance" it is not entitled to § 39.653 proceeds.

To further make clear its intent that defaulted cooperatives required to securitize under SB 1580 were not to be included in ERCOT's § 39.653 financing, the Legislature expressly stated: "**This section does not apply to any balance securitized under Subchapter D, Chapter 41.**" PURA § 39.653(i) (emphasis added). This complete exclusion, read harmoniously with the

[10] Rayburn's CFO, David Braun, testified that Rayburn has already taken steps to securitize. *See* Aug. 24 Tr. at 233-234; 244-245 (Braun cross).

mandatory nature of SB 1580—as applied to Rayburn[11]—can be interpreted by the Commission to carve Rayburn out from § 39.653 entirely. It neither receives Uplift Balance financing proceeds under § 39.653(b)(3), nor is it assessed Uplift Charges under § 39.653(c). Rayburn's remedy is to securitize under SB 1580.

Additionally, the Commission could, as suggested by Staff,[12] allow Rayburn to enter a payment plan with ERCOT and thereby opt out under § 39.653(d).[13]

II. Calculating the Uplift Charges on a $/MWh will cause delay, increase implementation costs, and result in higher Uplift Charges.

Several Intervenors propose that Uplift Charges be calculated on a $/MWh basis, to remain fixed unless and until an adjustment needs to be made upon annual true-up.[14] Such an approach is unworkable for a number of reasons, including:

- ***First***, a $/MWh charge would likely delay the closing of the debt obligations, as ERCOT would have to develop forecasts of usage to satisfy the credit rating agencies that ERCOT will have adequate Uplift Charge revenues to service the debt. ERCOT does not currently have any load-specific usage forecasts for this type of scenario, and cannot begin developing those forecasts until it knows who will opt out of the Uplift Charges. After the opt-out process is complete, it would then take several months to develop the forecast of only those participants that will be assessed Uplift Charges. In addition, ERCOT does not have historical load forecasts for this type of scenario on a granular level that a rating agency will require to run stress tests before rating the debt. This could become an unsolvable problem that leads to either protracted delays, or a lower rating and therefore higher Uplift Charges.

- ***Second***, a $/MWh charge would likely result in higher monthly Uplift Charges than a flat monthly amount because a cushion would have to be built into the amount of Uplift

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[11] *See supra*, n.6.

[12] *See* Staff Ex. 2 (Bivens Dir.) at 20-21.

[13] The Commission requested that Rayburn expeditiously determine whether it disputes Rayburn's "relevant costs" are approximately $94.9 million as stated in the Rebuttal testimony of Kenan Ögelman. ERCOT provided Rayburn the requested information, and Rayburn has confirmed it does not dispute ERCOT's calculation of its approximate "relevant costs."

[14] *See* Just Energy Ex. 1 (Carter Dir.) at 12; Joint Intervenors' Statement of Position at 4; NRG Ex. 1 (Barnes Am. Dir.) at 10; CCR's Original Statement of Position at 5; EDF Energy Services' Statement of Position at 2; Texpo Power's Statement of Position at 2. Statements of position are not evidence. ERCOT cites to them only to provide context for the discussion in this brief.

Charges to guard against forecast risk. By contrast, if ERCOT bills a set amount each month, there is no forecast risk or volatility other than the risk of default, which ERCOT can hedge against by requiring collateral.

- ***Third***, a $/MWh charge would create seasonality risk in the collection and transfer of the Uplift Charges, meaning that ERCOT would likely collect considerably more Uplift Charges in some months than needed to service the debt, and in some months it would likely collect considerably less. A flat amount each month avoids that problem.

- ***Fourth***, a $/MWh charge would likely result in additional implementation and ongoing costs relative to ERCOT's proposed methodology, and those additional costs would be borne by LSEs in the form of higher Uplift Charges.

Each of these reasons is explored more fully in the ERCOT rebuttal testimony of Sean Taylor and Charles Atkins.[15] Arguments offered to the contrary fall generally in two categories: (1) implementing the daily Uplift Charge into existing systems may be difficult for LSEs[16]; and (2) charges on a $/MWh basis can be more easily passed-through to and clearly communicated to end-users.[17] ERCOT's proposed methodology does not preclude LSEs from passing through their Uplift Charges to their customers on a $/MWh basis.

The Commission should reject the LSEs' proposal that Uplift Charges be assessed on $/MWh basis. By their own admission, they are simply seeking to shift their risks onto ERCOT.[18] The Commission should not accept higher Uplift Charges as a "trade off" to ease the LSEs' own administrative burden and mitigate their own risk.[19] No matter their reasons, it is undisputed that ERCOT's proposal results in the "lowest Uplift Charges."[20] That statutory pre-requisite outweighs

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[15] *See* ERCOT Ex. 9 (Taylor Reb.) at 5-12; ERCOT Ex. 8 (Atkins Reb.) at 6-11.

[16] *See supra*, n.14.

[17] *See* Just Energy Ex. 1 (Carter Dir.) at 13 (asserting "the charges [for a MWh basis] can be more effectively communicated to end use customers."); Joint Intervenors' Statement of Position at 4 (arguing that "passing through daily-changing uplift charges . . . may be difficult for customers to understand their bill."); EDF Energy Services' Statement of Position at 2 ("The MWh basis . . . is the clearest way for customers to understand how much they will be charged"); Texpo Power's Statement of Position at 2 (same).

[18] *See* Aug. 24 Tr. at 228:2-15 (Barnes cross).

[19] *See* Aug. 24 Tr. at p. 229:6-16 (Barnes cross).

[20] *See* ERCOT Ex. 9 (Taylor Reb.) at 6:10-14; 7:1-2; ERCOT Ex. 8 (Atkins Reb.) at 8:19-23, 10:17-20.

these named inconveniences for LSEs, particularly given that ERCOT's proposal is designed to provide the greatest benefit to the market as a whole. ERCOT's proposal more timely alleviates current market liquidity issues and results in the lowest Uplift Charges.[21]

III. LSEs must document their own exposure as required by the statute.

One of the contested issues in this proceeding—from ERCOT's perspective—is whether LSEs must document their own exposure to RDPA charges and ancillary service costs in excess of the system-wide offer cap, or whether ERCOT should be required to document that exposure for them. Some Intervenors maintain that ERCOT should be solely responsible for documenting the LSEs' exposure for them based on their assertions that ERCOT has everything it needs to perform these calculations.[22] But PURA places the burden of documenting exposure on LSEs:

> [P]rovide the process for remitting the proceeds of the financing to load-serving entities who were exposed to the costs included in the uplift balance, ***including a requirement for the load-serving entities to submit documentation of their exposure***.

PURA § 39.653(b)(3). That makes sense as those LSEs are seeking $2.1 billion in proceeds based on their exposure.

To be clear, ERCOT has always stated and still maintains that it will provide the Commission and market participants any assistance it reasonably can. But as a practical matter, and depending on the Commission's decision regarding required documentation or the "netting" issue, ERCOT simply may not have the information and tools to determine each LSE's exposure, nor does PURA require it to do so. Other Intervenors recognize this and agree with ERCOT.[23]

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[21] PURA Section 39.651(e) requires the Commission to "ensure the structuring and pricing of debt obligations results in the lowest uplift charges."

[22] *See* Just Energy Ex. 1 (Carter Dir.) at 7:4-15; Exelon Ex. 1 (Berg Dir.) at 7:12-16; Exelon Ex. 2 (Simpson Dir.) at 7:13-8:6; Engie Resources LLC and Engie Energy Marketing NA, Inc.'s Statement of Position at 2.

[23] *See* Calpine Ex. 1 (Schleimer Dir.) at 8:2-12; CCR Ex. 1 (Priestly Dir.) at 4:19-5:12; NRG Ex. 1 (Barnes Am. Dir.) at 9:13-18.

These issues are covered at length in the Rebuttal Testimony of Kenan Ögelman,[24] and again in his testimony at the hearing.[25]

Accordingly, both as a practical matter and in lockstep with PURA § 39.653, ERCOT should not be required to bear the responsibility of documenting and determining LSEs' exposure for them. ERCOT is, of course, willing to help where it can with the data that is readily available to it. Once the Commission decides how "exposure" will be determined, ERCOT can provide it with an explanation of how ERCOT can assist the Commission and market participants.

IV. Imposing Uplift Charges on QSEs is consistent with PURA, the Protocols, and the established settlement structure of the wholesale market.

As noted in Section V below, a new Protocol section will be needed for the assessment and collection of Uplift Charges consistent with the Debt Obligation Order. The concerns raised by Tenaska related to independent QSEs can be addressed in those new Protocols.

Copying its arguments in Docket No. 52331,[26] Tenaska Power Services Co. ("Tenaska") argues that ERCOT's proposal to assess the Uplift Charges to QSEs runs contrary to PURA. To the extent it has to play middleman to LSEs, Tenaska asks the Commission to absolve it of any liability for a market participant's failure to pay. These arguments again fall flat.

Section 39.653(c) of PURA states:

> (c) The independent organization shall assess uplift charges to all load serving entities on a load ratio share basis, which may be translated to a kwh charge, including load serving entities who enter the market after an order has been issued under this subchapter, but excluding the load of entities that opt out under Subsection (d).

[24] *See* ERCOT Ex. 7 (Ögelman Reb.) at 7-16.

[25] *See* Aug. 24 Tr. at 143:12-145:2; 146:1-148:14 (Ögelman cross); *See* Aug. 25 Tr. 276:6-278:7 (Ögelman cross).

[26] Tenaska Statement of Position at 5.

Citing to this provision, Tenaska asserts that "[n]owhere does the proposed Debt Obligation Order impose an obligation upon the load serving entities to make the required payments to their QSE."[27] But, conversely, nowhere does this provision state that LSEs *cannot* make Uplift Charge payments through their QSEs. What's more, this provision addresses only **how** these charges must be calculated—i.e., on a load ratio share basis. It does not address the collection of these charges. And contrary to Tenaska's assertion, the Legislature's silence as to an issue must be presumed to manifest an intent to maintain the existing law on the issue; that is, to maintain the current market structure under the ERCOT Protocols, which is to assess market charges solely upon QSEs and CRRAHs.[28]

Tenaska's characterization of ERCOT's proposal as an improper shift in the ultimate responsibility for payment ignores the fact that Tenaska, in its role as an independent QSE, already takes on exactly that liability for all settlement charges imposed on the LSEs and Resource Entities represented by Tenaska. *See* Protocol § 16.2.1(1)(i) ("To become and remain a Qualified Scheduling Entity (QSE), an Entity must meet the following requirements . . . (i) ***Be financially responsible for payment of Settlement charges for those Entities it represents*** under these Protocols.") (emphasis added). This is true whether those market participants are affiliated or not. And every LSE that applies to participate in the wholesale market must provide ERCOT a written acknowledgement from its QSE accepting financial responsibility for the LSE. *See* Protocol

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[27] Tenaska Statement of Position at 3. Tenaska offered no testimony in this proceeding and did not question a single witness—including the ERCOT witnesses that offered testimony on the existing settlement structure in which ERCOT financially interacts only with QSEs and CRR Account Holders. *See* Aug. 24 Tr. at p. 135:21-[22] (Ögelman and Taylor cross).

[28] It is well-settled that the Legislature is charged with knowledge of existing law when creating new legislation. *See In re Pirelli Tire, L.L.C.*, 247 S.W.3d 670, 677 (Tex. 2007) ("All statutes are presumed to be enacted by the Legislature with full knowledge of the existing condition of the law and with reference to it.") (internal quotations omitted). The ERCOT Protocols constitute existing law. *See Public Util. Comm'n v. Constellation Energy Commodities Grp., Inc.*, 351 S.W.3d 588, 594–95 (Tex. App.—Austin 2011, pet. denied).

§ 16.3.1.1 ("The applicant shall include a written statement from the designated QSE acknowledging that the QSE accepts responsibility for the applicant's transactions under these Protocols (Section 23, Form B, Attachment A)."). This is the law under the Protocols, and the Legislature is presumed to have known that. And the Protocols will, as requested by ERCOT and others, be amended to include provisions governing the transactions under Subchapter N (and M).

To the extent that a QSE seeks to hedge its liability, there are proper channels available for it to do so. QSE contracts with LSEs and Resource Entities, for example, likely have provisions to protect the QSE from these risks; if they do not, that is a risk of the QSE's own making. And the Protocols allow a QSE to terminate its representation of an LSE, although the QSE remains liable for settlement obligations incurred prior to termination of the QSE/LSE relationship. *See* Protocol § 16.2.3.3(2) ("The QSE is responsible for settlement obligations that the QSE has incurred on behalf of the terminated LSE . . . before the termination.").

In short, QSEs are already financially responsible for the market participants they represent. The Legislature gave no indication that it intended to deviate from this established legal market structure, and there is no reason to change the market structure now for a single Intervenor.

V. Supplemental Information and Final Recommendations

The Commissioners had several requests for information and questions that need to be answered or clarified.

ERCOT was asked to quantify the estimated number of pending settlement disputes related to the winter storm event. Fifty-nine market participants have submitted a total of 1,928 settlement and/or billing disputes for operating days within the Period of Emergency. Of the 1,928 disputes submitted, approximately 981 are related to real-time market settlement; 226 disputes are related

to day-ahead market settlement; 572 disputes are related to invoice calculations; and 149 disputes are related to CRR settlement.

Carrie Bivens was asked how many LSEs there are, and she estimated between 80-100.[29] ERCOT clarifies that for the Period of Emergency there were 205 LSEs and 128 QSEs that represented LSEs during that time. Currently, ERCOT records identify 205 LSEs and 124 QSEs that represent LSEs.

The Commission also requested that ERCOT provide data showing the statistics of QSE/LSE relationships. ERCOT has prepared the chart below to provide that information.[30]

	Period of Emergency (02/12 – 02/20/2021)	**Present** (as of 08/31/2021)
Total QSEs	259	247
• QSEs representing only LSEs (load)	105	99
• QSEs representing only Resource Entities (generation)	131	123
• QSEs representing LSEs & Resource Entities (load & generation)	23	25
Total LSEs	205	205
Total Non-Opt-In Entities ("NOIE")	127	126

ERCOT reiterates that whatever the Commission decides with respect to the disputed issues on which ERCOT takes no position, including the process by which eligible market

[29] *See* Aug. 25 Tr. at p. 352:24-353:2; 369:20-370:2 (Bivens Cross).

[30] Pursuant to ERCOT Protocol Section 16.2.1(3), a QSE registered with ERCOT "may partition itself into any number of subordinate QSEs"—i.e., sub-QSEs. ERCOT Protocol Section 16.2.1(4) provides that each sub-QSE is "treated as an individual QSE for all purposes including communications and control functions," except that "liability, financial security, and financial liability is cumulative for all [sub-QSEs]" and is the responsibility of the parent QSE. Although the parent QSE is financially responsible for its sub-QSEs, ERCOT invoices sub-QSEs separately; accordingly, a QSE may establish sub-QSEs for accounting purposes. For purposes of the numbers provided herein, each sub-QSE currently registered with ERCOT is counted as a separate QSE.

participants opt out, the timing of the resolution of those issues will affect the ultimate timing of when the Uplift Balance proceeds may be available to be disbursed.[31]

ERCOT reiterates its recommendation that a separate compliance docket be used by which ERCOT will report back to the Commission to address any questions and for ERCOT to advise the Commission how it is implementing the securitization.[32]

As ERCOT stated at the proceeding and in the Rebuttal Testimony of its witnesses, ERCOT has compromised on issues where it can. ERCOT has agreed to base the daily Uplift Charge invoices on initial settlement data, rather than on load ratio share from the day prior.[33] This is consistent with ERCOT's current processes for daily invoices. ERCOT has also explained that, while it still believes a collateral requirement based on four months of anticipated Uplift Charges is reasonable, if the Commission believes a lesser amount is appropriate, then it believes a minimum of two months should be required.[34]

Finally, the current ERCOT Protocols do not contain any provisions governing the assessment and collection of Uplift Charges. Transparency of the obligations imposed by the Debt Obligation Order, including the assessment and collection of Uplift Charges, on existing and new wholesale market participants is paramount going forward for the next 30 years. ERCOT accordingly requests that the Commission order the creation of a new Protocol section that will govern the assessment and collection of Uplift Charges consistent with the requirements of the Debt Obligation Order.

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[31] *See* Aug. 24 Tr. at p. 163:3-164:4 (Atkins cross).

[32] *See* Aug. 25 Tr. at p. 273:12-24 (Seely clarifications).

[33] *See* ERCOT Ex. 7 (Ögelman Reb.) at 32:1-33:2.

[34] *See* ERCOT Ex. 7 (Ögelman Reb.) at 22:1-23:23.

Requested Relief

ERCOT requests that the Commission issue a Debt Obligation Order authorizing ERCOT to secure up to $2.1 billion of Uplift Balance financing, plus reasonable costs consistent with ERCOT's Application and proposed Debt Obligation Order. ERCOT further requests that the Commission construe the Legislature's enactment of SB 1580 and HB 4492 in the 87th Regular Session together as a whole and completely carve out Rayburn from ERCOT's § 39.653 financing, or adopt a path forward by which Rayburn can opt out. ERCOT also requests that the Commission reject certain Intervenors' proposal to assess Uplift Charges on a $/MWh basis, reject any requirement that ERCOT document LSEs' exposure for them (understanding that ERCOT will provide all the assistance it reasonably can), and reject Tenaska's proposal to absolve them of liability and only require that LSEs bear ultimate responsibility for payment of Uplift Charges. Finally, ERCOT requests that the Commission order ERCOT, in conjunction with other stakeholders, to develop new Protocols to implement the provisions of the Debt Obligation Order.

Respectfully submitted,

WINSTEAD PC

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CERTIFICATE OF SERVICE

This document was filed on the Commission Interchange website on September 1, 2021. 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.

/s/ Elliot Clark
Elliot Clark