



Filing Receipt

Received - 2021-09-01 03:02:58 PM
Control Number - 52322
ItemNumber - 268

PUC DOCKET NO. 52322

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

**INITIAL BRIEF OF
CALPINE CORPORATION**

SEPTEMBER 1, 2021

TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION AND SUMMARY.....	1
II. THE COMMISSION SHOULD NOT DISCRIMINATE AGAINST END-USE CUSTOMERS	3
III. OTHER ISSUES	6
IV. CONCLUSION	8

PUC DOCKET NO. 52322

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

INITIAL BRIEF OF CALPINE CORPORATION

TO THE HONORABLE COMMISSIONERS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

COMES NOW Calpine Corporation (“Calpine”), by and through its attorneys of record, and respectfully submits its initial brief pursuant to instructions from the administrative law judge (“ALJ”) during the hearing on the merits in the above captioned docket, held before the Public Utility Commission of Texas (“PUC” or “Commission”) on August 24-25, 2021.¹ At the conclusion of the hearing on the merits, the ALJ directed the parties to submit their initial briefs by September 1, 2021.² Accordingly, this brief is timely filed.

I. INTRODUCTION AND SUMMARY

On July 16, 2021, the Electric Reliability Council of Texas (“ERCOT”) filed its Application³ for a Debt Obligation Order to finance Uplift Balances under the Public Utility

¹ Tr. at 373:5-7 (Administrative Law Judge Hunter Burkhalter) (Aug. 24, 2021).

² *Id.*

³ *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*, Docket No. 52322, ERCOT Exhibit 1 (Jul. 16, 2021).

Regulatory Act (“PURA”) ⁴ Chapter 39, Subchapter N, for an Order initiating a Parallel Docket, and for a Good Cause Exception (“Application”). ERCOT’s Application seeks Commission approval to finance the Uplift Balance, as that term is defined in PURA § 39.652(4), with up to \$2.1 billion in securitized funds.

Overall, Calpine supports adoption of ERCOT’s Application, with certain modifications as discussed in this brief, because it will advance the goal of prioritizing end-use customers. As stated in the direct testimony of Calpine witness Steven Schleimer, Senior Vice President of Government and Regulatory Affairs, Calpine supports the Commission approving a debt obligation order that accomplishes the following: ⁵

1. Finances the full statutory \$2.1 billion uplift balance;
2. Requires uplift charges to be assessed on load serving entities (“LSEs”) per each LSE’s daily load ratio share;⁶
3. Requires uplift charges to be assessed to new market participants to prevent LSEs from exiting and re-entering the market to avoid uplift charges;⁷
4. Establishes the process and criteria required to opt-out of uplift charges⁸ and the documentation required for LSEs to demonstrate exposure to uplift balance costs⁹ in the parallel docket to this proceeding;¹⁰
5. Establishes a pro rationing methodology (should total exposure exceed \$2.1 billion) in a manner that does not differentiate between LSEs according to their ability to refund end-use customers that have paid the uplift costs in question or that remain obligated to pay them;¹¹ and
6. Directs ERCOT to adopt Protocols for calculating the load ratio share of entities opting out.¹²

⁴ Public Utility Regulatory Act, Tex. Util. Code §§ 11.01-66.016.

⁵ *Application of the Electric Reliability Council of Texas, Inc., for a Debt Financing 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, ERCOT Exhibit 1 (Jul. 16, 2021), Direct Testimony of Steven Schleimer, Calpine Exhibit 1 (“Calpine Ex. 1”).

⁶ Calpine Ex. 1, Schleimer Direct at 10:29-30.

⁷ *Id.* at 11:1-3.

⁸ Calpine Ex. 1, Schleimer Direct at 7:5-19.

⁹ *Id.* at 8:3-26

¹⁰ *Proceeding for Eligible Entities to File an Opt Out Pursuant to PURA § 39.653(d) and for Load-Serving Entities to File Documentation of Exposure to the Debt Obligation Order in Docket No. 52322, Docket No. 52634 (pending)*.

¹¹ Calpine Ex. 1, Schleimer Direct at 5:21-22.

¹² *Id.* at 5:23-24.

Only by making whole those who were most financially impacted by Winter Storm (“Uri”) can the Commission instill confidence that it can and will protect end-use customers from these types of volatile market conditions.

As discussed below, Calpine also supports the positions described in the Joint Intervenors’ Post-Hearing Brief (“Joint Brief”) filed by several intervening parties.¹³ To the extent those positions diverge from what Calpine has advocated in its own testimony, Calpine believes it can support those alternate solutions to achieve consensus among the parties.

II. THE COMMISSION SHOULD NOT DISCRIMINATE AGAINST END-USE CUSTOMERS

This proceeding gives the Commission an opportunity to help those in the ERCOT market most financially impacted by Uri: end-use customers who have paid or would otherwise be obligated to pay uplift balance costs. To this end, Calpine has suggested that the Commission should ensure that the financing does not discriminate among LSEs’ end-use customers who bore the financial burden of the Reliability Deployment Price Adder (“RDPA”) and Ancillary Service (“AS”) charges that exceeded \$9,000 per MWh during Uri. This approach is required by House Bill (“H.B.”) 4492.¹⁴

PURA § 39.651(d) is clear that refunding or canceling these costs directly borne by retail customers is a priority:

The proceeds of debt obligations issued under this subchapter must be used solely for the purpose of financing reliability deployment adder charges and ancillary service costs that exceeded the commission’s system-wide offer cap and were uplifted to load serving entities based on consumption during the period of emergency. A load-serving entity that receives proceeds from the debt obligations may use the proceeds solely for the purpose of fulfilling payment obligations directly related to such costs *and refunding costs to retail customers who have paid or otherwise would be obligated to pay such costs.* (emphasis added)

¹³ Joint Intervenors’ Post-Hearing Brief, Docket No. 52322 (Sep. 1, 2021). (hereinafter “Joint Brief”).

¹⁴ Calpine Ex. 1, Schleimer Direct at 7.

The necessity of passing through financing proceeds to end-use customers is similarly reflected in the positions of other parties to this proceeding, even where repaying customers is not their stated “first” priority. For example, the following parties have made recommendations that reflect an emphasis on making customers whole:

Texas Industrial Energy Consumers (“TIEC”): In the event that the amount of claims from LSEs exceed \$2.1B, TIEC supports “providing refunds (or credits against outstanding invoices) from the securitization to retail customers who were directly affected by the uplift charges before providing relief directly to LSEs for their own exposure.”¹⁵

TXU Energy Retail Company, LLC, et al (“TXU”): In its discussion of netting (discussed herein, below) TXU agrees with TIEC’s position that if the total exposure exceeds the \$2.1B cap imposed by HB. 4492, that “a uniform reduction across all affected customers on the basis of load-ratio share” be implemented.¹⁶

Commission Staff: Staff witness Carrie Bivens also recommends that in the event that the documented exposure costs exceed \$2.1B that “[a] prioritization method could be used to prorate the amount based on the uses of the financing under PURA 36.651(d) - namely, refunding retail customers who have paid or would otherwise be obligated to pay such costs.”¹⁷

Joint Intervenors: Their Joint Brief recommends that if an LSE receives proceeds for items that were part of the uplift balance, the Commission should require that LSE to credit the customers’ account if those charges were passed through, and refund any payments received for those charges.¹⁸

Calpine agrees that, as an alternative to Calpine’s original proposal, the prioritization of customers can be accomplished through a requirement that LSEs receiving financing proceeds submit documentation to the Commission demonstrating that they have “*refund[ed] costs to retail customers who have paid or otherwise would be obligated to pay such costs,*” as Calpine has consistently advocated in this proceeding (emphasis added).

The corporate structure of an LSE should not dictate whether customers receive financing proceeds. As long as an LSE receives proceeds, it should be required to pass these funds to the

¹⁵ Direct Testimony of Charles Griffey, TIEC Ex. 1 at 11 (“TIEC Exhibit 1”).

¹⁶ Direct Testimony of Amanda J. Frazier (*amended*), TXU Ex. 1 at 22:17-19 (“TXU Exhibit 1”).

¹⁷ Direct Testimony of Carrie Bivens, Staff Ex. 3 at 19:9-11 (“Staff Exhibit 3”).

¹⁸ Joint Brief at 9.

end-use customers who paid them or credit the accounts of those that are obligated to pay them. Indeed, relying solely on the corporate structure of an LSE to determine whether it should receive any financing proceeds would lead to discriminatory and unjust results for certain end-use customers. For example, when posed a hypothetical scenario wherein one LSE is part of a corporate family with generation affiliates and is subject to netting at a corporate family level, and a second LSE has no generation affiliates, Staff witness Carrie Bivens acknowledged that the first LSE may not be refunded any financing proceeds to pass through to its exposed customers. Accordingly, those customers of the first LSE who paid RDPA and AS in excess of \$9,000/MWh would receive *zero* refunds, while the eligible customers of the second LSE would receive refunds. This result would be dictated merely by virtue of whether the LSE had affiliated generation against which to net their costs.¹⁹ Despite this inequitable result, the customers who did not receive a refund – solely because of the corporate structure of their LSE – would still be required to pay the resulting uplift charges necessary to repay the financing.

Finally, documenting that LSEs have passed through financing proceeds to end-use customers should not be complicated or cumbersome. As Mr. Schleimer explained to Commissioner Cobos at the hearing on the merits, “we suggest that the load-serving entity provide invoices, or whatever is needed, to show that the customers were passed through the charges...and that there would be some kind of mechanism for an executive for the company or some type of affidavit that those [charges] were passed along to the customer (emphasis added).”²⁰ As he further explained in his direct testimony, implementing this approach would only require LSEs to “submit sworn reports detailing its total amount of uplift balance costs as part of its documentation” of its exposure to uplift costs.²¹ Contrary to the suggestion of TXU witness Amanda Frazier, implementing this recommendation should not be complicated – there is no need for ERCOT to identify a LSE’s customers or calculate their refund amount,²² and no need that contractual or

¹⁹ Tr. at 312:1-25 (Bivens Cross) (Aug. 25, 2021). As Mr. Schleimer explained during his cross examination, “you shouldn’t discriminate [against] pass through customers based on the corporate structure of their load-serving entity” (Emphasis added).

²⁰ Tr. at 172: 3-10 (Schleimer Re-direct) (Aug. 24, 2021).

²¹ Calpine Ex. 1, Schleimer Direct at 8: 4-5.

²² Tr. at 283:5, 8-13 (Frazier Cross) (Aug. 25, 2021).

hedge arrangements be submitted to the ERCOT of the Commission.²³ In fact, ERCOT would have no involvement in identifying these customers and calculating the amount due to them. The LSEs would perform this task as part of their exposure submission or a compliance submission required by the Commission, and this determination should be no more complicated than the remainder of the LSE exposure submissions required in the parallel docket.

III. OTHER ISSUES

Accurately tracking those entities opting out of uplift charges resulting from the financing of ERCOT's Uri uplift balance, as well as documenting LSEs' exposure to uplift balance costs, is critical. This tracking and documenting may require proprietary customer information to be submitted to ERCOT. Submitting this information must not come at the expense of protecting the confidentiality accorded to proprietary customer information under Commission rules. 16 TAC § 25.272(c)(5) addresses proprietary customer information, the types of protections required of this information, and requires this information to be designed as confidential or otherwise protected.²⁴ The Commission should ensure that this information be protected in the process of documenting exposure,²⁵ as well as opt outs.²⁶

It does not appear that any party opposed this recommendation. Accordingly, Calpine urges the Commission to adopt Calpine's and Staff's recommendation that the Commission protect proprietary customer information as the Commission and ERCOT use the parallel docket to track opt outs and document exposure to uplift costs consistent with Section 25.272(c)(5).

²³ Tr. at 287:20-23 (Frazier Re-Direct) (Aug. 25, 2021).

²⁴ 16 TAC § 25.272(c)(5): Proprietary Customer Information – Any information compiled by an electric utility on a customer in the normal course of providing electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute proprietary customer information.

²⁵ See Calpine Ex. 1, Schleimer Direct at 8.

²⁶ Tr. at 291:6-9 (Zerwas Cross), Staff Ex. 3 (Aug. 25, 2021). Staff witness recommended that information considered sensitive or that has customer information should be submitted as confidential.

Mr. Schleimer’s direct testimony offers recommendations on several other important and related issues. To help achieve consensus, however, Calpine can generally support the recommendations in the Joint Brief submitted in this docket by the Joint Intervenor in this proceeding, which are listed below.²⁷

Issue	Calpine’s Positions
Opt Outs	<ul style="list-style-type: none"> • Entities opting out of receiving uplift financing should do so affirmatively and in writing.²⁸ • Entities opting out should be tracked.²⁹ • A standardized form should be utilized.³⁰ (Attachment A)
Uplift Charges	<ul style="list-style-type: none"> • Calpine agrees that ERCOT’s proposal to allocate charges on a daily load ratio share basis to new market entrants is reasonable.³¹ • Alternatively, as proposed by the Joint Intervenor,³² Calpine is amenable to a per MWh charge if ERCOT’s concerns can be addressed.³³
True-Ups	<ul style="list-style-type: none"> • Calpine supports the quarterly true-up frequency proposed by ERCOT. • Alternatively, Calpine is amenable to less frequent true-ups as proposed by the Joint Intervenor.³⁴
New Entrants	<ul style="list-style-type: none"> • Calpine agrees with ERCOT that uplift charges should be imposed on incoming LSEs and is consistent with H.B. 4492. • Imposing these costs will help maintain market stability.³⁵
Collateral Requirements	<ul style="list-style-type: none"> • Calpine believes that imposing collateral requirements worth 1-4 months of estimated charges is reasonable.
QSE Pass-through to LSEs	<ul style="list-style-type: none"> • Calpine agrees with the Joint Intervenor’s recommendation to require QSEs to pass through all financing proceeds to the LSEs they serve.³⁶

²⁷ Joint Brief *supra* note 13.

²⁸ Calpine Ex. 1, Schleimer Direct at 7:6.

²⁹ Calpine Ex. 1, Schleimer Direct at 7:16.

³⁰ Joint Brief (Attachment A) at 4. Calpine has attached this form to this Initial Brief.

³¹ Calpine Ex. 1, Schleimer Direct at 9; *See* Rebuttal Testimony of Kenan Ogelman at 6:9-13 (Aug. 20, 2021).

³² Joint Brief at 5-7.

³³ Rebuttal Testimony of Charles Atkins, ERCOT Ex. 8 at 6-11 (“ERCOT Ex. 8”); Rebuttal Testimony of Sean Taylor ERCOT Ex. 9 at 5-12 (“ERCOT Ex. 9”). Expressing concerns about rating agency objections.

³⁴ Joint Brief at 7-9.

³⁵ Calpine Ex. 1, Schleimer Direct at 9:18-20; *See* ERCOT Application at 8.

³⁶ Joint Brief at 9.

IV. CONCLUSION

Calpine appreciates the opportunity to help guide the Commission's decisions on helping the Texas electric industry and customers overcome the financial impacts suffered from Winter Storm Uri. To best implement this goal and maintain fidelity to H.B. 4492, Calpine urges the Commission to avoid an order that potentially discriminates against customers based merely on which LSE happened to serve them. Calpine appreciates the opportunity to participate in this important matter.

Respectfully submitted,

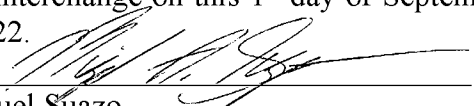
Diana Woodman Hammett
Vice President & Managing Counsel, Legal
Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, Texas 77002
Direct: (713) 820-4030
Email: diana.woodmanhammett@calpine.com

By: 

Chris Reeder
State Bar No. 166923300
Alaina Zermeno
State Bar No. 24026259
Miguel Suazo
State Bar No. 24085608
HUSCH BLACKWELL
111 Congress Avenue, Suite 1400
Austin, Texas 78701
Phone: (512) 479-1154
Fax: (512) 481-1101
chris.reeder@huschblackwell.com
alaina.zermeno@huschblackwell.com
miguel.suazo@huschblackwell.com

CERTIFICATE OF SERVICE

I certify that a true and correct copy of Calpine Corporation's Initial Brief has been served on all parties of record via filing on the Commission's Interchange on this 1st day of September 2021 in accordance with Order No. 2 in Docket No. 52322.


Miguel Suazo

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