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PUC DOCKET NO. 52322

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

TEXAS INDUSTRIAL ENERGY CONSUMERS' INITIAL BRIEF

I. INTRODUCTION

Texas Industrial Energy Consumers (TIEC) seeks to ensure that the Commission's order in this proceeding (a) provides maximum achievable refunds, within the \$2.1 billion statutory cap, for customers who were exposed to "Uplift Charges" and (b) implements the transmission-voltage customer opt-out consistent with the statutory language and intent.

A. Allocation of Funds

Depending on how Load Serving Entities' (LSEs') exposure is calculated, the evidence indicates that total Uplift Charges may exceed the \$2.1 billion statutory cap.¹ If the Commission adopts a "gross" allocation, where each LSE's exposure is its allocated Uplift Charges, the total Uplift Charges will almost certainly have to be prorated in some fashion. If a "net" allocation is used, the details of "netting" will determine whether the cap is exceeded, and by how much. TIEC has not taken a position on whether a "net" or "gross" allocation is appropriate, but observes that under a "netting" approach, some LSEs would receive little or no refund of the Uplift Charges. Correspondingly, a customer that was directly exposed to pass-through charges could receive little to no refund purely as a product of their particular REP's business model. This result seems arbitrary and out-of-sync with the intent of HB 4492, which is to provide relief customers who received extreme February bills.

To address this issue, the Commission should require LSEs to first refund uplift costs to customers who received the charges as a pass-through before retaining funds to offset their own exposure. If feasible, the Commission should also provide refunds to LSEs sufficient to at least

¹ Staff Ex. 2, Direct Testimony and Workpapers of Carrie Bivens (Bivens Dir.) at 11, 18-19.

cover the exposure of their pass-through customers before applying any prorationing or “netting.” This is consistent with PURA § 39.660, which states that LSEs “*must* adjust customer invoices to reflect the offsets for any charges that were or would otherwise be passed through to customers.”² Prioritizing refunds to retail customers is equitable because sophisticated LSEs—whose entire business is electricity—are in a better position than their customers to manage the risk of uplift costs. Further, LSEs will likely recover Subchapter N³ financing charges from their retail customers, and it would be a double-payment for a customer that paid uplift costs to receive only a partial refund but bear the full amount of future financing charges.⁴

TIEC supports Calpine’s proposal, which would first distribute funds to LSEs in proportion to the refunds/credits they owe to pass-through customers.⁵ Any remaining funds could be distributed to LSEs on a gross or net basis, as the Commission determines. This two-phased approach would prevent customers from being treated differently based on their REP’s business model, which they cannot control. TIEC recognizes, however, that time constraints and logistics may not permit a granular analysis of each LSEs’ pass-through quantities prior to disbursing the securitization funds. If this is an impediment, TIEC recommends that at least 50% of the bond funds be distributed to LSEs⁶ on a gross load-ratio-share basis to facilitate refunds or credits to retail customers who were directly exposed to uplift costs.⁷ The remaining 50% may be distributed pro rata to LSEs based on their “exposure” (either net or gross).⁸ Regardless, all LSEs should have an obligation to refund or credit customers to the maximum possible extent before retaining bond proceeds for their own exposure. As Mr. Griffey recommended, the Commission should adopt a process to verify that LSEs have provided appropriate refunds or credits to all customers with pass-through charges on their invoices.⁹

² Emphases added.

³ PURA § 39.652(5).

⁴ TIEC Ex. 1, Direct Testimony and Exhibits of Charles Griffey (Griffey Dir.) at 11.

⁵ Calpine Ex. 1, Direct Testimony of Steve Schleimer (Schleimer Dir.) at 6-7.

⁶ Through the applicable QSEs.

⁷ Calpine Ex. 1, Schleimer Dir. at 7.

⁸ *Id.*

⁹ TIEC Ex. 1, Griffey Dir. at 12.

B. Transmission-Voltage Opt-Out

The Commission should also clarify several aspects of the opt out process for transmission-voltage customers. First, the Commission's order should confirm that every transmission voltage customer can opt out if they have paid all bills "for usage during the period of emergency" in accordance with PURA § 39.652(d). As TIEC witness Mr. Griffey explained, the phrase "*for usage* during the period of emergency" was intended to distinguish amounts owed for power purchased from the grid or a REP during the period of emergency from other potential charges or settlements a customer may owe in a different capacity.¹⁰ For instance, a customer that provides responsive reserve service (RRS) as a Load Resource might still be disputing invoices with its QSE from February. These disputed amounts would not be "for usage," but for services provided as a Resource. As long as the customer paid its retail bills, it should be able to opt out in this scenario. Mr. Griffey's testimony on this issue was not challenged at the hearing or in any other party's testimony.

Additionally, PURA allows *all* transmission-voltage customers that have paid their invoices "for usage" to opt out of the securitization charges, not just customers whose contracts directly pass through uplift costs as argued by TXU/Luminant witness Ms. Frazier.¹¹ Ms. Frazier's proposal to exclude certain transmission-voltage customers from the opt-out is completely unsupported by PURA Chapter 39, Subchapter N. Unlike residential and small commercial customers, industrial contracts are highly varied and complex. An individual customer may receive uplift charges as a pass-through item based on a number of factors, including their quantity of usage or other contractual terms, such as self-providing ancillary services or reselling power that was purchased forward. The Legislature recognized that industrial customers are sophisticated businesses with complex retail agreements and that they should be able to opt out of this financing process if they are able to fully pay their February bills under whatever individual retail terms.

Finally, for consistency, the Commission should require all REPs to distribute the same opt out notice and request form to their transmission voltage customers.¹² TIEC has included a draft notice form as Attachment A to this brief, which is a mark-up of the draft previously provided by

¹⁰ *Id.* at 6.

¹¹ TXU LSEs Ex. 4, Direct Testimony and Exhibits of Amanda J. Frazier (Frazier Dir.) at 24.

¹² TIEC Ex. 1, Griffey Dir. at 9-10; Staff Ex. 3, Direct Testimony of Rebecca Zerwas (Zerwas Dir.) at 11.

a group of REPs including Just Energy, Gexa, NRG, APG&E, and Southern Federal Power.¹³ TIEC's main changes to that proposal are to (a) require the notice to be filed at the PUC, so the record does not exclusively live with the customer's current REP, and to (b) allow a customer to prove up payment if the relevant REP is unwilling or unable to sign the notice and confirm the customer's eligibility. TIEC envisions that the notices will be filed in Docket No. 52634, with a copy sent to the customer's REP,¹⁴ which mirrors the process for industrial customer opt-outs from renewable portfolio standard (RPS) requirements under PURA § 39.904(m-1).¹⁵

II. ARGUMENT AND AUTHORITIES

A. The Commission's order should prioritize maximum achievable refunds to retail customers.

PURA § 39.651(d) requires LSEs to use bond funds solely for “fulfilling payment obligations directly related to [the uplift balance] and refunding such costs to retail customers who have paid or otherwise would be obligated to pay such costs.” If total claims against the bond proceeds exceed the \$2.1 billion financing cap, the bond proceeds should first be used to reduce customers' exposure to RDPA charges and ancillary services costs above the Commission's system-wide offer cap, and secondarily to mitigate the LSEs' exposure.¹⁶ This outcome is in line with PURA § 39.660, which states that “[a]ll load-serving entities that receive offsets to specific uplift charges from the independent organization under this subchapter *must adjust customer invoices to reflect the offsets for any charges that were or would otherwise be passed through to customers* under the terms of service with the load-serving entity, including by providing a refund for any offset charges that were previously paid.”¹⁷ Additionally, prioritizing customer refunds is more equitable for two reasons. First, energy companies whose primary business is to sell electricity and participate in the ERCOT market are in a better position to anticipate and manage the financial impacts of Winter Storm Uri than end-use customers.¹⁸ Second, regardless of how the bond funds are allocated, it is likely that LSEs will pass along securitization charges to their

¹³ Docket No. 52322, Joint Intervenors' Statement of Position at Attachment A (Aug. 12, 2021).

¹⁴ TIEC Ex. 1, Giffey Dir. at 10; Staff Ex. 3, Zerwas Dir. at 6.

¹⁵ See generally *Industrial Customers' Notification Under PURA Section 39.904(m-1) Relating to Non-Support of Renewable Energy Requirements*, Docket No. 35113; see also 16 T.A.C. § 25.173(j)(3).

¹⁶ TIEC Ex. 1, Griffey Dir. at 10-11.

¹⁷ Emphasis added.

¹⁸ TIEC Ex. 1, Griffey Dir. at 11.

customers in some form, and it would be double-payment for a customer who was directly charged for uplift costs in February to also bear the full amount of the financing charges going forward.¹⁹

TIEC has not taken a position on whether the Commission should “net” each LSE’s exposure to uplift costs against payments received from ERCOT by the LSE’s affiliates. However, TIEC observes that a “netting” approach could treat customers who were exposed to the uplift costs differently depending on their REP’s business model. A customer whose REP has a generation affiliate, for example, would likely get a lesser refund (if any) than a customer with an unaffiliated REP. This seems arbitrary, especially since the Uplift Charges will be allocated on a gross load-ratio-share basis.

To address this, TIEC supports Calpine’s allocation proposal. As Calpine witness Mr. Schleimer recommended, “as a first principle . . . customers exposed to the uplift costs should be first in line to receive debt financing proceeds resulting from this proceeding.”²⁰ To accomplish this objective, LSEs should first receive securitization funds in proportion to the amounts owed to end-use customers with pass-through charges,²¹ and “[t]his should take place in advance of any application of a netting methodology.”²² Consistent with Mr. Griffey’s recommendation, this would help ensure that all customers who were directly exposed receive the maximum achievable refund,²³ and are treated similarly regardless of their specific REP’s business model. Any residual funds could then be distributed pro rata to LSEs based on their remaining exposure, whether calculated on a net or gross basis.²⁴

TIEC recognizes that determining each LSE’s pass-through quantities may be logistically challenging, particularly under the tight Subchapter N financing timeline. If Calpine’s allocation methodology is unworkable due to these constraints, TIEC recommends that at least 50% of the bond proceeds be distributed on a gross load-ratio share basis to ensure that all LSEs have some funds available to provide refunds to directly impacted customers. The remaining 50% could then be allocated based on the Commission’s determination of whether “exposure” means net or gross

¹⁹ *Id.*

²⁰ Calpine Ex. 1, Schleimer Dir. at 6.

²¹ Through the applicable QSEs.

²² Calpine Ex. 1, Schleimer Dir. at 6.

²³ TIEC Ex. 1, Griffey Dir. at 10-12.

²⁴ *Id.* at 7.

exposure. Considering the additional funds that should be made available by opt-outs from transmission-voltage customers, Option 2 REPs, and NOIEs, this approach would hopefully provide a reasonable path to ensuring that customers receive the maximum achievable refund within logistical and time constraints.

B. The Commission should clarify certain aspects of the opt out process for transmission voltage customers under PURA § 39.652(d).

1. All retail transmission voltage customers who have paid their invoices “for usage” during the “period of emergency” should be eligible to opt out.

PURA § 39.652(d) allows certain entities,²⁵ including transmission-voltage customers served by a REP, to affirmatively opt out of the securitization process, thereby both waiving their right to receive any proceeds from the uplift financing and avoiding any obligation to pay securitization charges. Importantly, these entities are only eligible to opt out if they “pa[y] in full all invoices owed *for usage* during *the period of emergency*.”²⁶ As explained by TIEC witness Charles Griffey, the phrase “for usage” is meant to distinguish amounts owed for power purchased at retail during the period of emergency from other potential charges or settlements a customer may owe in a different capacity.²⁷ For example, it is common for large customers to provide ancillary services to the ERCOT market, and there are a variety of pending disputes among these customers and their QSEs related to ancillary service settlement charges from February. Any settlements related to responsive reserve service (RRS) as a Load Resource would not be “for usage,” but for services provided in a customer’s capacity as an ancillary service provider.²⁸ Accordingly, to prevent unnecessary disputes over customers’ eligibility in the expedited opt out docket, the Commission should confirm that a transmission-voltage customer is eligible to opt out under PURA § 39.652(d) if it has paid all invoices for retail energy consumption (and charges assessed based on that usage) during the period of emergency.

²⁵ Namely, “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.” PURA § 39.652(d).

²⁶ *Id.* (emphases added).

²⁷ TIEC Ex. 1 (Griffey Dir.) at 6.

²⁸ *Id.*

The Commission should also reject TXU/Luminant witness Amanda Frazier’s proposal to prevent a retail transmission voltage customer from opting out of securitization charges if the customer was not “liable for uplift costs.”²⁹ Ms. Frazier’s proposal is not supported by any language in Subchapter N, which categorically allows *all* transmission voltage customers to opt out if they have paid all “usage” charges for the period of emergency. The statute does not restrict the opt-out to customers who are on a pass-through product for uplift charges, nor should the Commission’s order. As noted above, industrial retail contracts are more complicated than residential and small commercial contracts. Customers may be fully or only partially exposed to pass-through charges based on the specific volumes consumed, and there are often numerous contractual terms at play that support the overall commercial agreement between a customer and its REP. It is not reasonable or realistic for the Commission to evaluate each individual contract and determine a customer’s exposure to the uplift charges before permitting an opt-out. This proposal is also unworkable in the context of the expedited opt out docket. As such, the Commission should not adopt Ms. Frazier’s unsupported, unworkable proposal to limit industrial customer opt-outs to certain contract terms.

2. Transmission voltage customers should file opt out notices for eligible ESI IDs in Docket No. 52634.

TIEC concurs with Commission Staff witness Ms. Zerwas that industrial customers should file opt out requests and related documentation with the Commission in Docket No. 52634, with a copy sent to the customer’s REP.³⁰ A similar system has worked well for many years for industrial customer opt outs from renewable portfolio standard (RPS) requirements under PURA § 39.904(m-1).³¹ Filing opt out notices in a Commission docket will create a permanent record that customers can refer to in the future, and eliminates the risk that documentation of their opt out will be lost if, for example, the customer’s REP goes out of business.

TIEC generally agrees with Ms. Zerwas’s recommendation³² that transmission voltage customer opt outs should include:

²⁹ TXU LSEs Ex. 4, Frazier Dir. at 24.

³⁰ TIEC Ex. 1, Griffey Dir. at 10; Staff Ex. 3, Zerwas Dir. at 6.

³¹ See generally *Industrial Customers’ Notification Under PURA Section 39.904(m-1) Relating to Non-Support of Renewable Energy Requirements*, Docket No. 35113; see also 16 T.A.C. § 25.173(j)(3).

³² See Staff Ex. 3, Zerwas Dir. at 9.

- A list of the ESI IDs associated with the opt out;
- The REP of record during the emergency period for each ESI ID;
- The current REP of record for each ESI ID; and
- An attestation from an executive officer of the entity affirming that the company will notify its REP of record during the emergency and its current REP of record of its opt out application.

In addition, the opt out filing should provide customers with the option of demonstrating payment of all invoices for usage through either (a) verification from the customer's REP of record during the period of emergency or (b) the customer's own internal documentation of charges and payment, such as invoices and related payment confirmations, if the REP is unable or unwilling to provide the verification.³³ TIEC's draft opt out request form, which is part of the notice materials included as Attachment A, reflects these requirements.

TIEC also agrees with Commission Staff that REPs are best situated to notify transmission voltage customers of their opportunity to opt out of the securitization process under PURA § 39.652(d).³⁴ For consistency and ease of administration, the Commission should require all REPs to distribute the same notice form to their current transmission voltage customers. Additionally, the Commission should require each REP to provide notice pursuant to the communication preferences in the customer's contract, and to communicate the opt-out eligibility to the designated customer representative by email, in addition to mailing notice.³⁵ Any mailed notice should be separate from regular bills and appropriately identified as requiring urgent action on the exterior of the envelope.³⁶

A group of REPs including Just Energy, Gexa, NRG, APG&E, and Southern Federal Power provided a proposed opt out notice form along with their joint Statement of Position.³⁷ TIEC believes that this draft opt out notice provides a good base for discussion and has included proposed revisions to that document in redline and clean versions as Attachment A to this brief. TIEC's

³³ TIEC Ex. 1, Griffey Dir. at 9-10.

³⁴ *Id.*; see also Docket No. 52322, *Commission Staff's Recommendation on Sufficiency of the Application and Notice, Request for Good Cause Exception, and Request for a Parallel Proceeding* at 6 (July 27, 2021); Staff Ex. 3, Zerwas Dir. at 11.

³⁵ TIEC Ex. 1, Griffey Dir. at 9.

³⁶ TIEC Ex. 1, Griffey Dir. at 9.

³⁷ Docket No. 52322, Joint Intervenors' Statement of Position at Attachment A (Aug. 12, 2021).

revisions make two important changes to the proposal: (a) requiring the notice to be filed at the PUC in the pending opt-out docket, so that a customer's opt-out is not maintained solely by its current REP of record, and (b) providing a process for the customer to provide internal documentation to show that it has paid all usage charges if the relevant REP cannot or will not provide that confirmation. With these changes, TIEC supports a uniform notice for all opt-out notices.

III. CONCLUSION

For the reasons discussed above, the Commission's order should adopt an allocation method for the securitization proceeds that will provide the maximum achievable refund to customers who were directly exposed to uplift charges, within the limits of the \$2.1 billion cap. The Commission should either prioritize refunds to directly affected retail customers before applying either a "gross" or "net" allocation for the remainder of the funds. If this is not feasible, the Commission should refund a minimum of 50% of the proceeds based on gross load-ratio share to ensure that all customers receive some refund of their charges. Customers should not be arbitrarily disadvantaged due to their particular LSE's business model.

The Commission should also confirm that all transmission-voltage customers who have paid their retail bills for the period of emergency are eligible to opt-out. PURA states that all retail transmission voltage customers who have paid their invoices "*for usage* during the period of emergency"³⁸—meaning for energy consumption as a load—are eligible to opt out of the securitization process. Pursuant to the plain language of the statute, a customer may opt out regardless of whether it has other disputed invoices in its capacity as a wholesale market participant, and regardless of the customer's individual contract terms.

Finally, the Commission's order should include a notice form that every REP should be required to provide to its transmission voltage customers, along the lines of Attachment A to this brief. To opt out, customers should file that form and all supporting documentation in Docket No. 52634 and notify their REP of the filing. This will create a centralized record of customer

³⁸ PURA § 39.652(d) (emphasis added).

opt outs and provide each REP with the information necessary to determine its potential share of the financing proceeds.

Respectfully submitted,

O'MELVENY & MYERS LLP

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**ATTORNEYS FOR TEXAS INDUSTRIAL
ENERGY CONSUMERS**

CERTIFICATE OF SERVICE

I, John R. Hubbard, Attorney for TIEC, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 1st day of September 2021 by hand-delivery, facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.

/s/ John R. Hubbard

John R. Hubbard

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

ATTACHMENT A - CLEAN

[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 charges. This notice is being provided pursuant to an Order of the Public Utility Commission of Texas (“PUC”) 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 PUC’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**

ATTACHMENT A - CLEAN

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. 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, [Customer name] files the attached Opt Out Notice and supporting documentation in PUCT Docket No. 52634, and notifies [REP] in writing at the email listed below that it is exercising its right to opt out.

Instructions on the PUC’s e-filing process are available here:
<http://www.puc.texas.gov/industry/filings/E-FilingInstructions.pdf>.

Instructions on filing confidential information, such as ESI IDs and the REP of record, is available here: <http://www.puc.texas.gov/industry/filings/Confidential.aspx>

Please note that it is essential that all of the steps of the opt out process described above be completed 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

ATTACHMENT A - CLEAN

TRANSMISSION-VOLTAGE LEVEL CUSTOMER OPT OUT NOTICE FORM

By filing this form in PUCT Docket No. 52634, [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. This information should be filed as confidential at the PUCT and redacted in the public filing.]

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

[Include list here, or provide as attachment. This information should be filed as confidential at the PUCT and redacted in the public filing.]

Current REP of Record, and if different, REP of Record during the period of emergency for each ESI-ID listed above.

[Include list here, or provide as attachment. This information should be provided as confidential at the PUCT and redacted in the public filing.]

Notice of and Request for Opt Out

By signing below, _____ [Name of Signatory] affirms _____ [Customer name] has paid in full all invoices owed to the REP or REPs listed above for usage at the ESI IDs listed above during the period February 12, 2021 through February 20, 2021 (the period of emergency). _____ [Name of Signatory] also affirms that a copy of this opt out request and supporting documentation will be provided to the REP or REPs listed above concurrently with this filing.

_____[Customer name], as a transmission 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 Request is effective if signed by an executive officer with authority to act 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-voltage customer who has paid in full all invoices owed for usage during the period of emergency pursuant to PURA 39.653(d). If the Customer is unable to obtain signatures from its current REP or the REP that provided service during the period of emergency, Customer may opt out by submitting internal

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

ATTACHMENT A - CLEAN

documentation that it has paid all usage charges for the relevant ESI IDs during the period of emergency, along with a sworn affidavit from an authorized Customer representative.

[Signatures on following page.]

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

ATTACHMENT A - CLEAN

<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>

**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~~ charges. 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

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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] files the attached Opt Out Request Notice and supporting documentation in PUCT Docket No. 52634, and {Customer name} notifies [REP] in writing at the email listed below that it is exercising its right to opt out.

Instructions on the PUC’s e-filing process are available here:
<http://www.puc.texas.gov/industry/filings/E-FilingInstructions.pdf>.

Instructions on filing confidential information, such as ESI IDs and the REP of record, is available here: <http://www.puc.texas.gov/industry/filings/Confidential.aspx> ~~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 *all of the steps of the opt out process described above be completed* [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.

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

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

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

Sincerely,

[Signature]

[Printed Name and Position]

[Email for contact.]

[Phone for contact.]

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TRANSMISSION-VOLTAGE LEVEL CUSTOMER OPT OUT NOTICE FORM

By ~~submission of filing~~ this form in PUCT Docket No. 52634, [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. This information should be filed as confidential at the PUCT and redacted in the public filing.]

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

[Include list here, or provide as attachment. This information should be filed as confidential at the PUCT and redacted in the public filing.]

Current REP of Record, and if different, REP of Record during the period of emergency for each ESI-ID listed above.

[Include list here, or provide as attachment. This information should be provided as confidential at the PUCT and redacted in the public filing.]

Notice of and Request for Opt Out

By signing below, _____ [Name of Signatory] affirms _____ [Customer name] has paid in full all invoices owed to the REP or REPs listed above ~~[REP]~~ for usage at the ESI IDs listed above during the period February 12, 2021 through February 20, 2021 (the period of emergency). _____ [Name of Signatory] also affirms that a copy of this opt out request and supporting documentation will be provided to the REP or REPs listed above concurrently with this filing.

_____[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-Request~~ is ~~Effective-effective~~ Only-if ~~Signed~~-signed by an executive officer- with-who has authority to act 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). If the Customer is unable to obtain signatures from its current REP or the REP that provided service during the period of emergency, Customer

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may opt out by submitting internal documentation that it has paid all usage charges for the relevant ESI IDs during the period of emergency, along with a sworn affidavit from an authorized Customer representative.

[Signatures on following page.]

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<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>