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**Received - 2021-09-08 01:11:15 PM**

**Control Number - 52322**

**ItemNumber - 274**

**DOCKET NO. 52322**

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

**CITY OF AUSTIN D/B/A AUSTIN ENERGY’S REPLY BRIEF**

The City of Austin d/b/a Austin Energy (Austin Energy) submits this Reply Brief to address issues raised in the Initial Briefs of various parties. At the close of the hearing on the merits, the Commissioners requested Reply Briefs be filed by September 8, 2021. Therefore, this Reply Brief is timely filed.

**I. INTRODUCTION**

Austin Energy is a municipally-owned Non Opt-In Entity (NOIE) and Load-Serving Entity (LSE) with a statutory right under § 39.653(d) of the Public Utility Regulatory Act (PURA) to opt out of the uplift securitization process. Austin Energy supports the Public Utility Commission of Texas (PUC or Commission) opening a parallel docket where eligible LSEs may opt out of the securitization mechanism.<sup>1</sup> Austin Energy also generally supports Commission Staff’s recommendations regarding the opt-out process, as described in Commission Staff’s Initial Brief<sup>2</sup> and in Commission Staff Witness Rebecca Zerwas’ testimony.<sup>3</sup> Austin Energy, however, disagrees with certain proposals made by Commission Staff concerning the opt-out mechanism, as described below.

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<sup>1</sup> Austin Energy notes that the Commission has already initiated PUC Docket No. 52364, *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 Costs Pursuant to the Debt Obligation Order in Docket No. 52322*, for this purpose.

<sup>2</sup> Commission Staff’s Initial Brief (Sept. 1, 2021).

<sup>3</sup> Commission Staff’s Exhibit No. 3, Direct Testimony of Rebecca Zerwas.

## II. ARGUMENT

### A. Opt-Out Procedures

#### 1. NOIE Opt-Out Documentation Requirements

Austin Energy supports Commission Staff's assertion that eligible entities should provide certain information as part of the opt-out application, including the legal name of the entity; the entity's contact information; the name and contact information of the person designated as the entity's authorized representative at ERCOT; the specific eligibility category claimed under PURA § 39.653(d); and a sworn attestation from an executive officer of the entity affirming payment in full of all invoices for usage during the emergency period.<sup>4</sup> Additionally, to help establish the amount of the final uplift balance and to facilitate future ERCOT settlement of opt-out entities, Commission Staff recommends NOIEs should also provide the LSE's Data Universal Numbering System (DUNS) number, Qualified Scheduling Entity (QSE), and consumption meter information.<sup>5</sup> Austin Energy does not object to providing DUNS and QSE, but disagrees with Commission Staff's recommendation that NOIEs should be required to provide consumption meter information.

With respect to consumption meter information, Austin Energy is in alignment with South Texas Electric Cooperative, Inc. (STEC), Golden Spread Electric Cooperative, Inc. (GSEC), East Texas Electric Cooperative, Inc. (ETEC) (collectively, the G&T Cooperatives), and the Lower Colorado River Authority and LCRA WSC Energy (collectively, LCRA). As the G&T Cooperatives and LCRA each stated in their Initial Briefs, NOIEs should not be required to provide consumption meter information (meter-specific (ESI ID) data) because ERCOT uses boundary meter data instead to measure NOIE load.<sup>6</sup> All of the applicable NOIE boundary meter data for Austin Energy, which would be considered as part of the opt-out application in accordance with HB 4492, are already on file with ERCOT. ERCOT Witness Kenan Ögelman stated in his

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<sup>4</sup> Commission Staff's Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 8; Commission Staff's Initial Brief at 15 (Sept. 1, 2021).

<sup>5</sup> Commission Staff's Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 8.

<sup>6</sup> Joint Initial Brief of South Texas Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., and East Texas Electric Cooperative, Inc. on Subchapter N Securitization Opt-Out Procedures at 6 (Sept. 1, 2021).

testimony with respect to NOIEs, “ERCOT does not have ESI IDs to track.”<sup>7</sup> Commission Staff Witness Rebecca Zerwas similarly testified that “ERCOT receives usage data for NOIEs based on boundary meters that consider the service area as a whole but does not receive metering data from individual premises. Each NOIE has a designated QSE for settlement and ERCOT knows which boundary meters are associated with a specific NOIE.”<sup>8</sup> Therefore, a NOIE’s provision of consumption meter information would not benefit Commission Staff or ERCOT as part of the opt-out application, as ERCOT is already able to identify NOIE load without additional consumption meter information.

## 2. Opt-Out Timelines and Notice Requirements

Austin Energy generally agrees with the opt-out timelines and notice requirements as recommended by Commission Staff. With regard to timing of the opt-out process, Commission Staff recommends that 30 days after the issuance of the debt obligation order should be sufficient time for eligible entities to apply to opt out.<sup>9</sup> Commission Staff Witness Carrie Bivens also recommends an alternative timeline, recognizing that having both applications to opt out and applications documenting exposure due on the same day may require a true-up process.<sup>10</sup> To avoid a true-up, Ms. Bivens provides an alternative recommendation that staggers these applications such that applications documenting exposure are due 30 days after applications to opt out.<sup>11</sup> If the Commission requires submission of the opt-out documentation described above, Austin Energy supports Staff’s recommendations to establish a 30-day deadline to submit opt-out documentation. However, if the Commission requires additional or more onerous documentation to be submitted, additional time may be necessary to allow eligible entities sufficient time to collect and submit the required information. Austin Energy agrees with the G&T Cooperatives that “[b]ecause the consequences of failing to opt-out of default charges within the one-time process has such significant consequences for a [LSE], the Commission should ensure that the opt-out process is

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<sup>7</sup> ERCOT’s Exhibit No. 7, Rebuttal Testimony of Kenan Ögelman at 20; Lower Colorado River Authority and LCRA WSC Energy’s Initial Post-Hearing Brief at 6.

<sup>8</sup> Commission Staff’s Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 7.

<sup>9</sup> Commission Staff’s Initial Brief at 17 (Sept. 1, 2021); Commission Staff’s Exhibit No. 2, Direct Testimony of Carrie Bivens at 17; Commission Staff’s Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 6.

<sup>10</sup> Commission Staff’s Initial Brief at 17 (Sept. 1, 2021); Commission Staff’s Exhibit No. 2, Direct Testimony of Carrie Bivens at 17.

<sup>11</sup> *Id.*

not overly burdensome in a manner that would hinder the timely submission of opt-out documentation.”<sup>12</sup>

With regard to notice of the opt-out mechanism, Commission Staff recommends that:

Notice to entities that are potentially eligible to opt out should include information regarding the availability of debt obligation financing under Subchapter N, an explanation of which entities are eligible to opt out of the financing and corresponding uplift charges, and any relevant docket numbers and deadlines for entities to seek financing or file an opt out claim.<sup>13</sup>

Commission Staff also recommended that all potentially eligible entities should receive notice from ERCOT, and that ERCOT should also be required to provide direct notice to the Authorized Representative for all municipally-owned utilities.<sup>14</sup> Further, Commission Staff recommended the adoption of a standard notice form in this docket or in the parallel proceeding.<sup>15</sup> In the first round of briefing, other parties also recommended the adoption and use of a standardized notice form.<sup>16</sup> Austin Energy supports the notice requirements outlined by Commission Staff, and encourages the Commission to utilize a standardized notice form for each type of eligible entity (municipally-owned utilities, electric cooperatives, river authorities, a retail electric provider (REP) that has the same corporate parent as each of the provider’s customers, a REP that is an affiliate of each of the provider’s customers, and transmission-voltage customers served by a REP) to ensure uniform information is disseminated to and collected from all eligible entities.

## **B. The Opt-Out Mechanism as a One-Time and Final Event**

The clear and unambiguous language of PURA § 39.653(d) dictates that the opt-out mechanism contemplated by HB 4492 is a one-time, final event, and that there are no subsequent “significant changes” that would reverse or revise an entity’s opt-out status. In relevant part, PURA § 39.653(d) states:

The commission shall develop a *one-time process* that *allows municipally owned utilities*, electric cooperatives, river authorities, a retail electric provider that has

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<sup>12</sup> Joint Initial Brief of South Texas Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., and East Texas Electric Cooperative, Inc. on Subchapter N Securitization Opt-Out Procedures at 7 (Sept. 1, 2021).

<sup>13</sup> Commission Staff’s Initial Brief at 15 (Sept. 1, 2021).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*; Commission Staff’s Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 11.

<sup>16</sup> Initial Brief of Calpine Corporation at 7 (Sept. 1, 2021).

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 ***to opt out of the uplift charges*** by paying in full all invoices owed for usage during the period of emergency. Load-serving entities and transmission-voltage customers that opt out under this subsection shall not receive any proceeds from the uplift financing.<sup>17</sup>

Contrary to the statutory language, Commission Staff suggests that eligible entities who have opted out of the securitization mechanism could become subject to uplift charges in the future.<sup>18</sup> Specifically, Commission Staff states that “an opt out entity would only become subject to the uplift charges if there was a significant change to the entity or the premises approved as part of its opt out application”<sup>19</sup> and that “there are certain actions that may jeopardize an opt out entity's ability to avoid future uplift charges.”<sup>20</sup> Commission Staff then acknowledges that “incremental load growth by a NOIE... deemed eligible in the opt out application” would not meet this threshold.<sup>21</sup> Commission Staff requests that the Commission “should clearly define what changes that an entity can make while retaining its uplift charge exemption.”<sup>22</sup>

Austin Energy disagrees with Commission Staff's assertion that any “significant changes” could subject an opted-out entity to uplift charges. The plain language of PURA § 39.653(d) dictates that the opt-out mechanism is to be “a one-time process,”<sup>23</sup> and it does not contemplate any change in status at a later unknown date based on unknown factors. Further, Commission Staff itself recognizes that “[e]ntities that choose to opt out will not be subject to uplift charges for the duration of the repayment period and ERCOT must remove the load served by those entities when allocating uplift charges.”<sup>24</sup> Based upon the clear and unambiguous language in

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<sup>17</sup> PURA § 39.653(d) (emphasis added). HB 4492 in its entirety has been admitted as Commission Staff's Exhibit No. 4, House Bill 4492, Enrolled, 87th Texas State Legislature (Regular Session).

<sup>18</sup> Commission Staff's Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 9-10.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 10; “Significant changes to the entity or the premises from the opt out application could jeopardize the uplift charge exemption.” Commission Staff's Initial Brief at 16 (Sept. 1, 2021).

<sup>21</sup> Commission Staff's Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 10; “An uplift charge exemption should not be affected by load growth.” Commission Staff's Initial Brief at 16 (Sept. 1, 2021).

<sup>22</sup> Commission Staff's Initial Brief at 16 (Sept. 1, 2021); Commission Staff's Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 12.

<sup>23</sup> PURA § 39.653(d).

<sup>24</sup> Commission Staff's Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 4.

PURA § 39.653(d) and Commission Staff’s interpretation of the same language, there is no opportunity for an entity’s opt-out status to be later rescinded and reversed.

Notwithstanding Commission Staff’s assumption that entities who have opted out can somehow be opted back in, Austin Energy can think of no scenario applicable to a municipally-owned utility where once it opted out, it would later be subject to uplift charges, despite the statute’s clear language. Commission Staff even asserts that an “uplift charge exemption should not be affected by load growth.”<sup>25</sup> Commission Staff provides no other examples or scenarios where a municipally-owned utility’s exemption status would be subject to reversal. The plain language of the text, coupled with Commission Staff’s lack of clarity and the need for regulatory certainty in the securitization mechanism proceedings, should dictate that the final order issued in this proceeding allow municipally-owned utilities who have elected to opt out to remain opted out, and not be subsequently assessed future uplift charges based on a “significant change” to the entity.<sup>26</sup> Austin Energy supports the G&T Cooperatives’ position on this issue and agrees that “[c]ertainty regarding the permanence of an LSE’s opt-out status benefits both the opting-out entities as well as those participating in the uplift securitization.”<sup>27</sup> The Commission should seek to avoid unnecessary regulatory risks for opted-out entities and inevitable confusion and complication that would result from Commission Staff’s recommendation.

### III. CONCLUSION

Austin Energy generally supports Commission Staff’s recommendations regarding the opt-out process, but recommends that NOIEs not be required to provide consumption meter information, and that no additional or more onerous documentation be required to be submitted. Further, Austin Energy supports the notice requirements outlined by Commission Staff and encourages the Commission to utilize a standardized notice form. Austin Energy requests that the Commission ensure that the final order issued in this proceeding allow municipally-owned utilities who have elected to opt out to remain opted out, and not be subsequently assessed future uplift charges. In addition, Austin Energy requests that the Commission ensure that the final order issued

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<sup>25</sup> Commission Staff’s Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 10; Commission Staff’s Initial Brief at 16 (Sept. 1, 2021).

<sup>26</sup> Commission Staff’s Exhibit No. 3, Direct Testimony of Rebecca Zerwas at 9-10.

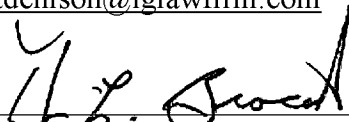
<sup>27</sup> Joint Initial Brief of South Texas Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., and East Texas Electric Cooperative, Inc. on Subchapter N Securitization Opt-Out Procedures at 2-4 (Sept. 1, 2021).

in this proceeding does not adversely impact those entities who choose to opt out in PUC Docket No. 52364, and requests that the opt-out process be efficient and not pose an undue burden on the Commission, on ERCOT, or on the parties themselves. Austin Energy appreciates this opportunity to submit a Reply Brief on ERCOT's Uplift Application.

Respectfully submitted,

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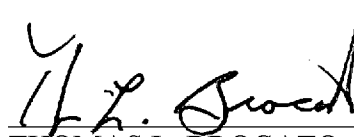
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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on September 8, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.



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