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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, FOR AN ORDER INITIATING A PARALLEL DOCKET, AND FOR A GOOD CAUSE EXCEPTION	§ § § § § § § §	**BEFORE THE** **PUBLIC UTILITY COMMISSION** **OF TEXAS**

REPLY BRIEF OF JOINT INTERVENORS

This Reply Initial Brief is filed on behalf of Just Energy,[1] APG&E,[2] and Southern Federal Power,[3] (collectively, "Joint Intervenors"). The Initial Briefs indicate widespread industry agreement on all aspects with the exception of the allocation of proceeds under the statute.

In general, the market participant intervenors show agreement on the following points:

- Structuring the uplift charges as a $/MWh charge will be beneficial to customers and will better ensure that the charges follow the load.
- A $/MWh structure will ensure consistency in implementation and will avoid the need for each LSE to perform a cost allocation to spread a daily lump sum charge to each of its customers.
- Any volumetric concerns for collection of uplift charges as a $/MWh can be handled with upfront weighting of the charges and true-ups that match the current system used for TDU securitization fees.

[1] "Just Energy" collectively refers to Just Energy Texas, LP, which holds REP Certificate No. 10052, Fulcrum Retail Energy, LLC d/b/a Amigo Energy, which holds REP Certificate No. 10081, Tara Energy, LLC which holds REP Certificate No. 10051, and Hudson Energy Services, LLC, which holds REP Certificate No. 10092.
[2] "APG&E" refers to AP Gas & Electric (TX) LLC, which holds REP Certificate No. 10105.
[3] "Southern Federal Power" refers to Southern Federal Power LLC, which holds REP Certificate No. 10264.

- This type of structure will best match the existing securitizations and there is no evidence that it would increase the cost of the securitization.
- The opt out process should be as simplified as possible and have long-term clarity of which entities have opted out.

With regard to the allocation of proceeds, this Reply Brief covers these essential points:

- The statute contemplates proceeds that would be less than the gross ancillary service costs over $9,000/MWh plus the reliability deployment price adder ("RDPA") charges.
- By requiring actual exposure, the plain reading of the statute requires offsets within corporate umbrellas that had no net effect from these unexpected costs and revenues.
- No party is "made whole" or becomes a "winner" from the actions taken during the winter storm in any scenario in this proceeding.
- No REP would receive a competitive advantage from calculating proceeds based on actual exposure with consideration of corporate offsets.
- The Legislative determination to base proceeds on exposure is not discriminatory against entities that own generation. It only addresses the specific extraordinary items identified in the legislation and recognizes that while all LSEs had some unexpected charges related to these costs, some entities also received unexpected payments for some or all of these extraordinary items. There is no disadvantage to the legislative decision to base proceeds on exposure which includes corporate offsetting payments for the specific charge types involved in this legislation.
- If some proration of proceeds is required, that proration should only be applied to amounts that exceed the actual exposure calculated with corporate offsets.
- Without the offsets as used in the calculation of exposure, the purpose of the financing order would be thwarted and a material percentage of the actual exposure of the eligible costs would not be addressed.

I. CALCULATION OF EXPOSURE

A. Reply to Arguments Against the Plain Reading of the Statute

No party refutes the fact that the ERCOT protocols include a calculation of "exposure" that is premised on net aggregate liability among affiliated entities.[4] Further, no party disputes that the statute ultimately requires that ERCOT only distribute proceeds to entities with documented exposure.[5]

The Initial Brief of the TXU load-serving entities and Luminant ("TXU/Luminant Brief") rests its arguments on the absence of the word "net" in the statutory definition of the term "uplift balance."[6] However, this argument ignores the $2.1 Billion cap modifier on the items identified in the definition of uplift balance.[7] A reasonable reading of the plain language makes clear that the statute does not contemplate that the full gross amount of the costs identified in the definition of uplift balance would be securitized. The Legislature only intended securitization to address the "actual exposure" of entities to those charges.[8]

The quantification of the total market-wide costs to load serving entities for ancillary services over $9,000 and RDPA charges was known at the time the legislation was adopted. In fact, it was well understood that the total of those two charge types from ERCOT on a market-wide basis were closer to $5 Billion on a market-wide basis. The $2.1 Billion reference in the statute pertains to the resulting amount if the total charges were offset by other payments for the same charges under the same corporate umbrella.[9]

TXU/Luminant complains that the plain reading of the statute fails to consider all of the other costs of the week.[10] However, the statute is clear that the uplift balance is isolated to two very specific items under the ERCOT protocols.[11] The Joint Intervenors share the wish that the

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[4] Direct Testimony of Michael Carter, Just Energy Ex. 1 at 6-7; *See*. Nodal Protocol 16.11.4 - *Determination of Total Potential Exposure for a Counter-Party.*
[5] PURA §39.653(b)(3)
[6] TXU/Luminant Brief at 4.
[7] PURA § 39.652(4).
[8] PURA §39.653(b)(3) and 39.653(e).
[9] Direct Testimony of Carrie Bivens, Staff Ex. 2 at 11-12.
[10] TXU LSE/Luminant Brief at 6
[11] PURA § 39.652(4).

Legislature had taken further action to consider a broader set of costs, but the plain reading of the statute makes clear they did not.

B. Offsets Account for Unintended Differing Impacts of Prior Regulatory Action

Some parties characterize applying the corporate umbrella offsets as an improper discriminatory act by the Legislature and the Commission.[12] In fact, these offsets must be considered to address the discriminatory impact of prior regulatory action on the various load serving entities. The legislative requirement to determine actual exposure accounts for a small portion of the disproportionate costs assessed on load serving entities to the extent they did not receive payments that mitigated some of the extraordinary and unexpected ERCOT charges during the storm.

Some corporations experienced a mitigated effect from the RDPA impacts, for example, because a portion of the extraordinary charges/payments money went from one corporate pocket to the other.[13] However, LSEs without affiliated generation had no corresponding payment from the unanticipated effects of the Commission decision to override the market and hold real-time energy prices at $9000/MWh for the duration of the event and beyond. The implementation of that decision had the corollary effects of extraordinary costs of ancillary services over $9,000/MWh and RDPA charges that were applied to generation reserves that delivered no power to customers.

Despite some entities' claims of business separation, the statute properly considers both payments and charges in the same corporate umbrella for the charges at issue here.[14] The evidence shows that many of the parties operate under an integrated business model. For example, in sworn regulatory reports to the United States Securities Exchange Commission, Vistra identifies itself as having an "integrated business model." TXU Energy uses that model as a selling point to its Texas retail electric customers.[15] Similarly, Calpine touts the benefits of owning generation in marketing its retail electric service:

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[12] Calpine Brief at 3.
[13] See, Just Energy Ex. 7a.
[14] TXU/Luminant Brief at 9; and Exelon Brief at 8.
[15] Just Energy Ex. 3 and 4.

Backed by Calpine's reliable and cost-effective generation fleet are our retail subsidiaries, Calpine Energy Solutions and Champion Energy Services.[16]

These entities should not be allowed to present themselves to the public as an integrated business, rely on that relationship for calculation of credit exposure at ERCOT, and yet, opportunistically, disavow that relationship for calculation of exposure in the current context.

Further, the "netting" calculation of exposure does not only include offsets for affiliated generation assets that received payments. The calculation of exposure begins with the step of netting performed for each load serving entity by beginning with Ancillary Service Charges which offset gross ancillary service cost exposure above $9000/MWh by any bilateral purchases of ancillary services by that load serving entity. Beginning the exposure calculation with this step is consistent with ERCOT protocols and ensures competitive neutrality in the treatment of these extraordinary costs. It should also be noted that if netting is not adopted, the calculation of exposure should be based on Ancillary Service Obligations and not Ancillary Service Charges.[17] In addition, under a consideration of offsets, it should be clear that negative ancillary service and/or RDPA payments would not be used to increase the actual exposure of the entity involved.

Interestingly, the TXU LSE's are quick to point to the losses of its parent company Vistra for the week of the storm as support for their arguments in this proceeding.[18] However, the Legislature limited this proceeding to the consideration of two extraordinary items that make up the uplift balance – Ancillary Services over $9000/MWh and RDPA charges. When considering just these two charge types under the ERCOT protocols, the Vistra entities collected more revenues than charges. Vistra mistakenly asserts that this legislation was somehow intended to address all of the financial impacts during the week of the storm. The losses incurred by Vistra due to weather impacts, high gas costs and the cost to replace energy due to their own generation outages are not within the scope of this legislation.[19]

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[16] Just Energy Ex. 5 (Emphasis added.)
[17] This is consistent with the testimony of TXU/Luminant witness Parker.
[18] TXU/Luminant Brief at 11,
[19] See, PURA 39.652(4), The definition of uplift balance states as follows: The term does not include amounts that were part of the prevailing settlement point price during the period of emergency.

TXU/Luminant is incorrect in arguing that assignment of the non-bypassable uplift charges to their LSE business is anti-competitive.[20] The uplift charges resulting from this proceeding will equate cents per MWh charge which will apply as a nonbypassable charge to every customer served by a competitive retail electric provider in ERCOT and the charge will follow the customer..[21] The legislation established the structure of these uplift charges for complete competitive neutrality in the ERCOT market.

C. Calculation of Exposure is Not an Unlawful Piercing of the Corporate Veil

Some parties argue that the Commission is somehow prohibited from following the plain reading of the statute by considering corporate offsets in the calculation of exposure for purposes of assigning proceeds.[22] First, the concept of piercing a corporate veil is one that relates to assignment of liability from one affiliate to another, which is not at issue here. No revenues are being disgorged from any entity in this proceeding. For example, those parties who received large amounts of revenues for RDPA payments will retain all of those revenues.[23]

In addition, the calculation of exposure under the statute is consistent with the calculation of exposure utilized by each of the parties to reduce the amount of collateral that must be posted to meet ERCOT's credit requirements.[24] It is this same voluntary structure that is required to be considered under the plain reading of the statute.

Consideration of affiliate payments received in the same corporate umbrella is not contrary to corporate law, and is in fact consistent with structuring decisions made by these entities as considered under ERCOT protocols and PURA.

D. Calculation of Exposure is Not Administratively Difficult

Contrary to some parties' assertions, the calculation of exposure using corporate offsets of charges and payment can be readily performed. The PUC Staff witness laid out a very succinct set of data and steps to allow an objective and verifiable calculation of exposure to

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[20] TXU/Luminant Brief at 11.
[21] This with the exception of opt out customers and opt out self-providing LSEs. (This would also be true in a modified way if ERCOT's proposed structure of the uplift charges is adopted.)
[22] See, Exelon Brief at 8 and TXU/Luminant Brief at 9
[23] For example, Vistra affiliates were paid $348,263,140 and Calpine received $79,752,121 in RDPA payments alone.
[24] Tr. 153 lines 1-14 (Cross examination of Mr. Ogelman).

be submitted by each LSE.[25] This simple method is consistent with the calculation of exposure under the protocols and is consistent with the testimony of Just Energy.[26]

The Commission should not be dissuaded from the statutory purpose of stabilizing the market by some parties attempts to find complexity in "broader concepts"[27] that are outside the two ERCOT charge/payment types that are addressed in the legislation (ancillary service over $9,000/MWh and RDPA). The two categories of exposure are specific to charges/payments solely between ERCOT and market participants. Those are the only costs associated with the week of the winter storm that are within the scope of this legislation.

E. Proration of Proceeds

The record evidence establishes that the $2.1 Billion cap on Subchapter N financing was set based on the presumption that exposure would be on a net basis considering corporate offsets.[28] Discussion of proration involves two different potential scenarios.

First, if exposure is calculated in the manner consistent with ERCOT protocols, the total exposure for the entire market will be very close to the $2.1 Billion cap. If a number of market participants opt out, the exposure based on corporate offsets is projected to be less than the $2.1 Billion cap. In that case, the Commission could decide to prorate the potentially available funds after opt outs above the total exposure and below the $2.1 Billion cap on a load ratio share. This proration could allow a portion of the securitized proceeds to reach all companies to ensure that funds are available to prioritize credits for any customers who have paid the extraordinary ancillary service and RDPA charges.

Second, if the Commission determines that the calculation of exposure is performed on some basis, and even after considering opt outs, the total portion of the uplift balance that counts as exposure exceeds the $2.1 Billion cap, the proration of those proceeds should be done on a ratio of total exposure amounts.[29]

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[25] Direct Testimony of Carrie Bivens, Staff Ex. 2 at 14-16; *see also* Joint Intervenors' Brief in Response to Order No. 4, incorporated herein by reference.
[26] Direct Testimony of Michael Carter, Just Energy Ex. 1 at 7 and Attachment MC-1; *Also See*, Nodal Protocol 16.11.4.1 - *Determination and Monitoring of Counter-Party Credit Exposure.*
[27] TXU/Luminant Brief at 8.
[28] Direct Testimony of Carrie Bivens, Staff Ex. 2 at 12:11-15.
[29] Tr. at 357; NRG Ex. 1. at 7.

The alternative methodology presented in the PUC Staff brief that would only apply if total exposure is above $2.1 Billion is problematic in several respect. First, it disproportionately would reduce funds to retail electric providers who serve a majority of residential and small commercial customers or who chose not to pass these charges on to their customers.[30] Further, it creates an arbitrarily dramatically different result in proceed allocations if the total exposure after opt out entities is $2.11 Billion v. $2.1 Billion. This methodology could also prioritize funds to municipally owned utilities and electric cooperatives because all of their customers have direct pass-through exposure. The result is incongruous with the statutory purpose of stabilizing the wholesale electric market and alleviating liquidity risk and reducing additional defaults in the wholesale market.[31]

II. STRUCTURE OF USAGE CHARGES

ERCOT rests its argument recommending against a $/MWh construction of the usage charges on two false premises:

> The Commission should not accept higher Uplift Charges as a "trade off' to ease the LSEs' own administrative burden and mitigate their own risk. No matter their reasons, it is undisputed that ERCOT's proposal results in the "lowest Uplift Charges."

The recommendation from all affected market participants for a $/MWh structure of uplift charges is not for their "ease" but rather to structure the charges in a way that will make them most transparent to end-use customers throughout the competitive retail electric market in ERCOT. The proposal from ERCOT is contrary to recent Commission decisions that recognize that using existing market structures for charges is preferable to a lump sum payment where each LSE is left with the discretion of how to perform cost allocation of that charge across its customer base. The testimony is clear that for residential and small commercial customers, a lump sum daily payment that changes every single day of the year is not conducive to transparency on the Commission-prescribed Electricity Facts Label.[32]

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[30] Tr. at 346
[31] PURA §39.651(b) and (c).
[32] Just Energy Ex. 1 at 13.

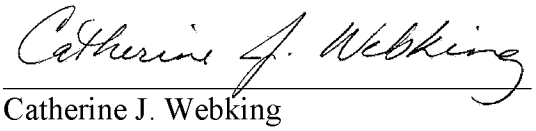
Further, the proposal for a daily lump sum charge based on load ratio share would mean that this charge would change for every resettlement including the 55 day settlement and the 180 day settlements because load ratio share changes in each resettlement. In contrast, like the System Admin fee, the individual customers would only experience a change in that cost should the individual meter reading for that individual customer change and that cost would be directly proportional to usage.

ERCOT is incorrect in it's claims it is "undisputed" that the proposal results in lowest Uplift Charge. Record evidence refutes this assertion in several respects.[33] First, the $ per kWh for securitization fees is the structure used in all Commission securitizations to date. Each of those securitizations involved the issuance of AAA bonds which is the best available on the market.

III. CONCLUSION

Based on the foregoing, the Joint Intervenors request that the Commission's Debt Obligation Order set forth a process for calculating exposure in a manner consistent with the ERCOT protocols with adjustments as described in the testimony addressed herein to account for only affiliated interests.

Respectfully submitted,



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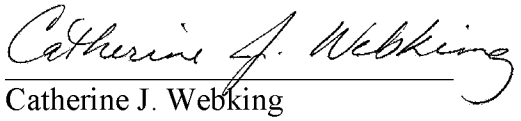
ATTORNEYS FOR JUST ENERGY, APG&E and SOUTHERN FEDERAL POWER

[33] *See,* Just Energy Ex. 1 at 8-13; and NRG Ex. 1 at 10.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served in accordance with the governing procedural orders to all parties of record in this proceeding on this 8th day of September 2021.



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