Control Number: 52322

Item Number: 303

Public Utility Commission of Texas

TO: Chairman Peter M. Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

cc: All parties of record

FROM: Stephen Journeay
Commission Counsel

DATE: 8 October, 2021

RE: October 13, 2021 Open Meeting, Item No. 2
Docket No. 52322, *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*

Attached for your consideration is a draft order that memorializes the Commission's decision in the above-referenced proceeding at the September 23, 2021 and October 7, 2021 open meetings. A redlined and a clean version are attached.

Parties must file any proposed corrections to the draft order no later than noon on Tuesday, October 12, 2021. For any proposed corrections, explain the basis for the correction and cite to evidence in the record that supports the correction.

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PUC DOCKET NO. 52322

APPLICATION OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. FOR A DEBT OBLIGATION ORDER PURSUANT TO CHAPTER 39, SUBCHAPTER N, OF THE PUBLIC UTILITY REGULATORY ACT	§ § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

DRAFT DEBT OBLIGATION ORDER (REDLINED)

This Order addresses the application of Electric Reliability Council of Texas, Inc. (ERCOT) for a debt obligation order under section 39.653 of the Public Utility Regulatory Act (PURA).[1] In its application, ERCOT seeks Commission approval of a debt financing mechanism to pay for the uplift balance and reasonable costs to implement this Order. ERCOT proposed that bonds be issued through a special purpose entity and the proceeds used to pay the uplift balance and that it be allowed to assess uplift charges to pay for the bonds.

An agreement resolving many issues in this matter was filed after the Commission held a hearing on the merits of the application. All parties that filed testimony signed the agreement and no party opposes the agreement. The parties agreed on issues related to opting out, allocating the uplift balance, and distributing the proceeds of the financing.

As discussed in this Order, the Commission finds that ERCOT's application, as modified by the agreement and this Order, should be approved and that the financing debt financing mechanism approved in this Order meets all applicable requirements of PURA.

In this Order the Commission approves the mechanisms that allow the uplift balance to be determined and the amount of the financing proceeds to be distributed and the documentation and calculations required to determine these amounts. The Commission also approves the mechanisms to calculate and assess uplift charges to repay the uplift balance and other amounts necessary to implement this Order and the financing mechanism established by this Order.

This Order also ensures that uplift charges are nonbypassable and establishes mechanisms to ensure that uplift charges are reviewed and adjusted on a quarterly basis to ensure sufficient

[1] Tex. Util. Code §§ ~~39.651–66411~~ 1.001–66.016. (PURA)

amounts of revenue make timely payments of debt service and other required amounts related to the debt obligation.

This Order approves ERCOT's proposal to issue bonds through a special purpose entity to finance the uplift balance providing security of uplift property and the use of credit enhancements to minimize uplift charges.

This Order also approves the securitization of uplift charges and the creation of uplift property.

The Commission also establishes certain criteria in this Order that must be met for the approvals and authorizations granted in this Order to become effective. Further, this Order requires specified documents and othe information be filed with the Commission so that it can ensure compliance with this Order.

This Order does not relieve or excuse any entity from paying amounts that it may owe to ERCOT.

I. DISCUSSION

A. Background

In February 2021, Winter Storm Uri resulted in outages at many of the generation resources within the ERCOT region, and the demand for power exceeded supply for several days during the week of the storm. The inadequate supply of power required that load be involuntarily shed to protect the integrity of the ERCOT grid, and many Texans lost power for extended periods that week. This condition also drove up prices in the wholesale electricity market causing a number of market participants, many of whom represented load-serving entities, to default on their payment obligations under ERCOT protocols. As a result of these payment defaults, ERCOT was unable to collect sufficient funds to fully pay certain wholesale-market participants who were due payments from ERCOT for power they produced during the storm.

To address these problems, the Texas Legislature enacted two bills that authorized financing mechanisms to provide funds to help ERCOT and market participants meet their obligations. One bill added subchapters M and N to chapter 39 of PURA and each provided

authority for a financing mechanism to address different aspects of the financial problem.[2] The other bill added subchapter D to chapter 41 of PURA to provide a financial mechanism for electric cooperatives to address the cooperatives extraordinary costs.[3] The Commission concludes that all of the mechanisms authorized by these two bills must be considered together to have a proper understanding of these mechanisms and the goals of the Legislature in authorizing these mechanisms. The Commission further concludes that the mechanisms authorized by these two bills must be considered together to decide whether the standards set out in PURA §§ 39.651-39.664 (subchapter N of chapter 39) have been met.

The Legislature found that the use of the debt financing mechanism authorized in subchapter N "will enable 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, alleviating liquidity issues and reducing the risk of additional defaults in the wholesale market.[4] The Legislature also found that authorizing financing under subchapter N "serves the public purpose of stabilizing the electricity market in the ERCOT region."[5] The Commission concludes that the debt financing mechanism approved in this Order meets these goals of the Legislature.

Further, to approve the debt financing mechanism addressed in this Order, the Commission must find that the financing will support the financial integrity of the wholesale market and is necessary to protect the public interest, considering the impacts on both wholesale-market participants and retail customers.[6] As discussed in this Order, the mechanism proposed by ERCOT in its application, as modified by the agreement and this Order, meet these standards and provide significant benefits to both wholesale-market participants and retail customers.

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[2] Act of May 30, 2021, 87th Leg., R.S , ch. 908 (HB 4492), §§2-5, 2021 Tex. Gen. Laws ___ (codified at PURA §§ 39.601–.609 (subchapter M) and PURA §§ 39.651–.664 (subchapter N)).

[3] Act of May 28, 2021, 87th Leg., R.S. §§1-3, 2021 Tex. Gen. Laws ___ (codified at PURA §§ 41.151–.163).

[4] PURA § 39.651(b).

[5] PURA § 39.651(c).

[6] PURA § 39.653(a).

B. Subchapter N

The financial mechanisms authorized in subchapter N that are meant to address two specific types of charges: reliability deployment price adder charges and ancillary services costs in excess of the Commission's system-wide offer cap, but only to the extent that these items were uplifted to load-serving entities on a load-ratio-share basis during a specified period: the period of emergency, which is defined as the period beginning at 12:01 a.m. on February 12, 2021 and ending at 11:59 p.m. on February 20, 2021.[7] These charges uplifted during the period of emergency are referenced as qualifying costs in this Order.

These qualifying costs in an amount not to exceed $2.1 billion make up the uplift balance, which is defined as "an amount of money of not more than $2.1 billion that represents amounts uplifted to load-serving entities on a load ratio share basis due to energy consumption during the period of emergency for [qualifying costs] excluding amounts securitized under subchapter D of chapter 41 [of PURA].[8] The uplift balance does not include amounts that were part of the prevailing settlement point price during the period of emergency.[9] Uplift charges will be assessed to load-serving entities to pay the uplift balance and the reasonable costs incurred by a state agency or ERCOT to implement a debt obligation order issued under subchapter N, including the cost of retiring or refunding existing debt.[10]

The Legislature provided three avenues to address the uplift balance: a debt obligation order under PURA § 39.653, commission-authorized financing under PURA § 39.654, or any other financial mechanism that meets the requirements of subchapter N to accomplish the purposes of that subchapter under PURA § 39.655. However, ERCOT was directed by the Legislature to file an application for a debt obligation order under PURA § 39.653 by July 15, 2021,[11] and it did so.

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[7] PURA § 39.652(3).

[8] PURA § 652(4).

[9] *Id*

[10] PURA § 39.652(5).

[11] Act of May 30, 2021, 87th Leg , R S , ch 908 (HB 4492), § 6, 2021 Tex Gen. Laws ___.

Subchapter N provides several benefits and protections for the financing of the uplift balance. One of these is that transactions involving the transfer and ownership of uplift property and the receipt of uplift charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.[12] Others are discussed immediately below.

1. Uplift property

The rights and interests of ERCOT, or a successor, under a debt obligation order, including the right to impose, collect, and receive uplift charges are only contract rights until they are first transferred or pledged in connection with the issuance of debt obligations. After a transfer or pledge, the rights and interest become uplift property.[13] Uplift property is a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of uplift charges depends on further acts of ERCOT, or others, that have not yet occurred.[14] Further, a debt obligation order remains in effect and the uplift property continues to exist for the same period as the pledge of the state described by PURA § 39.663.[15] In addition, all revenues and collections resulting from uplift charges constitute proceeds only of the uplift property arising from the debt obligation order.[16]

2. Pledge of the state

Debt obligations issued under a debt obligation order, including any bonds, are not a debt or obligation of the state of Texas and are not a charge on the state's full faith and credit or taxing power.[17] The state pledges, however, for the benefit and protection of financing parties and ERCOT that it will not take or permit any action that would impair the value of uplift property, or reduce, alter, or impair the uplift charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related debt obligations have been paid and performed in

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[12] PURA § 39.658

[13] PURA § 39.662(a).

[14] PURA § 39.662(a).

[15] PURA § 39.662(b).

[16] PURA § 39.662(c)

[17] PURA § 39.663.

full.[18] Any party issuing a debt obligation under a debt obligation order is authorized to include this pledge in any documentation relating to the obligation.[19]

3. Other authority and requirements

The commission is authorized to use any enforcement mechanism established by chapters 15 or 39 of PURA, including revocation of certification by the commission, against any entity that fails to remit excess receipts from the uplift-balance financing as required by PURA § 39.653(e), or otherwise misappropriates or misuses amounts received from the uplift-balance financing.[20]

In addition, a load-serving entity that receives proceeds from the uplift-balance financing must return an amount of the proceeds equal to any amount of money received by the entity due to litigation seeking judicial review of pricing or uplift actions taken by the Commission or ERCOT in connection with the period of emergency.[21]

C. Debt Obligation Order

This Order addresses the application of ERCOT for a debt financing order under PURA §39.653 to establish a financing mechanism to allow for payment of the uplift balance. As previously mention, to issue a debt financing order, the Commission must find that the proposed financing will support the financial integrity of the wholesale market and is necessary to protect the public interest, after considering the impacts on both load-serving entities and retail customers.[22] The Commission must issue a debt obligation order no later than 90 days after ERCOT files its application for the order.[23]

1. Contents of Order

A debt obligation order must state the uplift balance, state the period over which uplift charges must be assessed, and provide a process for remitting the financing of the uplift balance to load-serving entities who were exposed to the qualifying costs included in the uplift balance

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[18] *Id*

[19] *Id*

[20] PURA § 39.661.

[21] PURA § 39 664

[22] PURA § 39.653(a).

[23] PURA § 39.653(f)

that includes a requirement that the load-serving entities submit documentation of their exposure.[24] The order must also include a requirement that a load-serving entity that receives excess proceeds from the financing—proceeds from the financing that exceed that entity's actual exposure—notify ERCOT and remit the excess receipts.[25]

A debt obligation order must include terms ensuring that the imposition and collection of uplift charges authorized by the order are nonbypassable, except for entities that opt out of uplift charges.[26] However, as discussed below, other entities are exempted from the imposition and collection of uplift charges. In addition, the order must authorize ERCOT to establish appropriate fees and other methods for pursuing amounts owed from entities that exit the wholesale market.[27]

The Commission also recognizes that the Legislature has directed the Commission to require all market participants to fully and promptly pay to ERCOT all amounts owed to ERCOT.[28] And ERCOT is required to report to the Commission if a market participant does not make those payments.[29] Further, The Commission and ERCOT are directed to pursue collections of those amounts owing to ERCOT to reduce the costs that would other wise be borne by other market participants or their customers.[30]

2. Effect of Order

A debt obligation order becomes effective in accordance with its terms and the order, together with the uplift charges authorized in the order, and is irrevocable and not subject to reduction, impairment, or adjustment by further action of the Commission after it takes effect.[31] However, the Commission may refinance any debt obligations created by an order under this subchapter if the Commission determines that the refinancing is in the public interest and otherwise

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[24] PURA § 39.653(b).

[25] PURA § 39.653(e)

[26] PURA § 39.656(1).

[27] PURA § 39.656(2).

[28] PURA § 39.159(a) (as added by Act of May 30,2021, 87th Leg., R.S., ch. 908 (HB 4492), § 4)

[29] *Id* § 39.159(b)

[30] *Id* § 39.159(c).

[31] PURA § 39.653(f).

meets the requirements of this subchapter.[32] In addition, a debt obligation order is not subject to rehearing by the commission and is subject to an expedited judicial review process.[33] Further, A debt obligation is a nonrecourse debt secured solely by the uplift charges explicitly assessed to repay the obligation.[34] The independent organization's obligations authorized under this section do not create personal liability for the independent organization.[35]

3. Uplift Charges

Uplift charges are the amounts assessed to load-serving entities to repay amounts financed under subchapter N to pay the uplift balance and reasonable costs incurred by a state agency—which includes the Commission—or ERCOT to implement a debt obligation order under PURA §§ 39.653, 39.654, or 39.655, including the cost of retiring or refunding existing debt.[36]

Uplift charges must be assessed on all load-serving entities, excluding those that opt out of uplift charges, on a load-ratio-share basis, which may be assessed on a kilowatt-hour charge.[37] Uplift charges must also be assessed on load serving entities that enter the market after a debt obligation order is issued.[38] The imposition and collection of uplift charges authorized in a debt obligation order are nonbypassable except for entities that opt out of uplift charges.[39] Further, a debt obligation order must require that uplift charges are reviewed and adjusted at least annually, beginning not later than 45 days after the anniversary date of the issuance of a debt obligation.[40] The true-up mechanism must correct over- and under-collections of uplift charges and ensure the recovery of amounts sufficient to timely pay for the debt service and other required amounts for the debt obligation.[41]

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[32] *Id.*

[33] PURA § 39.653(g).

[34] PURA § 39.653(h)

[35] *Id*

[36] PURA § 39.652(5).

[37] PURA § 39.653(c)

[38] *Id*

[39] PURA § 39.656(a)

[40] PURA § 39.657(1)

[41] PURA § 39.657(2)

Other law provides that certain market participants are excepted from the requirement to pay uplift charges. These include a market participant that otherwise would be subject to an uplift charge solely as a result of acting as a central counterparty clearinghouse in wholesale-market transactions in the ERCOT power region and is regulated as a derivatives clearing organization, as defined by the Commodity Exchange Act (7 U.S.C. Section 1a).[42] Further, ERCOT may not reduce payments to or uplift short-paid amounts to a municipally owned utility that becomes subject to the jurisdiction of that independent system operator on or after May 29, 2021 and before December 30, 2021 related to a default on a payment obligation by a market participant that occurred before May 29, 2021.[43]

4. Opt-out process

The Commission is required to develop a one-time process that allows 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 to opt out of the uplift charges by paying in full all invoices owed for usage during the period of emergency.[44] Load-serving entities and transmission-voltage customers that opt out under this subsection must not receive any proceeds from the uplift financing.

While the opt-out process is not required to be established in a debt obligation order, the Commission concluded that it was necessary to establish that process here to allow the most timely and effective process for financing the uplift balance.

II. DESCRIPTION OF PROPOSED TRANSACTIONS

A description of the transactions proposed by ERCOT is contained in its application and the filing package submitted as part of the application. A brief summary of the proposed transaction is provided in this section. A more detailed description is included in the finding of fact in this Order.

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[42] PURA § 39.159 (as added by Act of May 28, 2021, 87th Leg., R.S., ch. 950 (SB 1580), § 3)

[43] PURA § 39.151(j-1).

[44] PURA § 39.653(d).

To facilitate the proposed financing, ERCOT proposed that one or more special purpose funding entities (BondCo) be created and to whom ERCOT will transfer the rights to impose, collect, and receive uplift charges along with the other rights arising under to this Order. Upon transfer, these rights will become uplift property. BondCo will issue subchapter N bonds and will transfer the net proceeds from the sale of the subchapter N bonds to ERCOT in consideration for the transfer of the uplift property. If ERCOT determines it to be necessary to achieve the lowest overall uplift charges consistent with market conditions and the terms of this Order, ERCOT may cause BondCo to be organized and managed in a manner designed to maintain BondCo as a bankruptcy-remote entity that would not be affected by the bankruptcy of ERCOT, or any other affiliates of ERCOT, or any of their respective successors. ERCOT may also cause BondCo to have at least one independent manager whose approval will be required for certain major actions or organizational changes by BondCo. ERCOT may organize BondCo so that it may issue more than one series of debt under conditions specified in the BondCo organizational documents.

The subchapter N bonds will be issued in accordance with an indenture and administered by an indenture trustee. The subchapter N bonds will be secured by and payable solely out of the uplift property created under this Order and other collateral described in ERCOT's application. That collateral will be pledged to the indenture trustee for the benefit of the holders of the subchapter N bonds and to secure payment of the uplift balance.

The servicer of the subchapter N bonds will collect the uplift charges and remit those amounts to the indenture Trustee on behalf of BondCo. The servicer will be responsible for making any required or allowed true ups of the uplift charges. If the servicer defaults on its obligations under the servicing agreement, the indenture trustee may appoint a successor servicer. ERCOT will act as the initial servicer for the subchapter N bonds.

Uplift charges will be calculated to ensure the collection of an amount sufficient to service the principal, interest, and related charges for the subchapter N bonds incurred to implement this Order. Uplift charges will be allocated among qualified scheduling entities representing load-serving entities on a load ratio share basis, including load-serving entities who enter the market after a Order has been issued, but excluding the load-serving entities that opt-out in accordance with ~~the Commission's one-time process~~this Order. The uplift charges will be calculated, assessed and charged in the manner described in this Order. In addition to the proposed annual true-up

required by PURA § 39.657, ERCOT proposed interim true-ups as may be required and performed as necessary to ensure that the amount collected from uplift charges is sufficient to service the subchapter N bonds. This Commission, however, modifies the proposed true-up mechanism in this Order. The methodology for making true-ups and allocation adjustments and the circumstances under which each will be made are described in more detail in the findings of fact in this Order.

ERCOT's proposed structure for the uplift charges is designed to provide substantially level annual debt-service and revenue requirements over the life of the bond issue, which will not exceed 30 years.

ERCOT seeks authority to pay out of the proceeds of the subchapter N bonds, the reasonable implementation costs incurred to implement this Order, including upfront costs associated with the issuance of the subchapter N bonds in accordance with this Order. As proposed, upfront costs may include (a) the cost of original issue discount, credit enhancements and other arrangements to enhance marketability, (b) the cost of ERCOT's financial advisor, (c) SEC registration fees, underwriters' fees, rating agency fees, attorneys' fees, (d) any costs incurred by ERCOT, including costs related to the establishment and maintenance of BondCo, and (e) any costs incurred by ERCOT if this Order is appealed. The draft issuance advice letter will reflect the estimated upfront costs to be paid from the proceeds of the subchapter N bonds. The amount of such upfront costs will be updated in the issuance advice letter to reflect more current information available to ERCOT prior to the issuance of the subchapter N bonds.

BondCo may, through uplift charges, cover the ongoing costs of maintaining and servicing subchapter N bonds as those are a cost to repay amounts financed under Subchapter N as authorized by this Order. The draft issuance advice letter will reflect the estimated ongoing costs of servicing and administering each series subchapter N bonds authorized in this Order. The amount of such ongoing costs will be updated in the final issuance advice letter to reflect more current information available to ERCOT prior to the issuance of the subchapter N bonds.

III. Findings of Fact

The Commission makes the following findings of fact.

A. Procedural History

Identification of Applicant and Background

1. ERCOT manages the flow of electric power to more than 26 million Texas customers representing about 90 percent of the state's electric load. As the independent system operator for the region, ERCOT schedules power on an electric grid that connects more than 46,500 miles of transmission lines and more than 710 generation units. It also performs financial settlement for the competitive wholesale bulk-power market and administers retail switching for 8 million premises in competitive choice areas. ERCOT is a membership-based 501(c)(4) nonprofit corporation, governed by a board of directors and subject to oversight by the Commission and the Texas Legislature. Its members include consumers, cooperatives, generators, power marketers, retail electric providers, investor-owned electric utilities, transmission and distribution providers and municipally owned electric utilities.

~~2. Winter Storm Uri resulted in forced outages at many of the generating resources within the ERCOT region, and demand for power greatly exceeded supply. On February 15, at 1:20 a.m., ERCOT declared its highest state of emergency, an Emergency Energy Alert Level 3 ("EEA3"), due to exceptionally high electric demand and the lack of supply. To avoid a blackout of the entire ERCOT region, ERCOT directed transmission operators to curtail load. Significant levels of generation forced outages continued from February 15 through February 20, with approximately 48.6% of the potential generation offline and unavailable at one point. As a result, the ERCOT system remained in EEA3 and continued to direct the curtailment of load until Thursday, February 18 at 12:42 a.m. ERCOT ended EEA3 on Friday, February 19 at 9:00 a.m., and ERCOT returned to normal operations at 10:35 am on February 19, 2021. During the winter storm, ERCOT instructed transmission operators to institute firm load shed, but this load shed was not one of the "out-of-market" actions specifically accounted for in the existing reliability deployment price adder (RDPA) calculation. Therefore, when firm load shed initially occurred on Feb. 15, 2021, there was no adjustment to the RDPA~~

~~calculated by ERCOT under Section 6.5.7.3.1 specifically in relation to the firm load shed conditions. As a result, for many of the intervals during which there was firm load shed on February 15, 2021, energy prices in ERCOT were less than the $9,000/MWh Value of Lost Load. To address this, the Commission issued an Order at an Open Meeting on Feb. 15, 2021, that directed ERCOT to "ensure that firm load that is being shed in EEA3 is accounted for in ERCOT's scarcity pricing signals." This directive was based on the Commission's observation that energy prices of less than $9,000/MWh during load shed conditions are "inconsistent with the fundamental design of the ERCOT market." Beginning at 10:15 p.m. on February 15, 2021 and continuing until ERCOT exited EEA3 at 9:00 a.m. on February 19, 2021, ERCOT adjusted the RDPA to result in a price adjustment that set energy prices at $9,000/MWh. Because of the manner in which the day-ahead market co-optimizes the procurement of energy and Ancillary Services, it is possible to produce prices for Ancillary Services products that can significantly exceed the system-wide offer cap, particularly during times of acute scarcity, which occurred during many hours of the Period of Emergency. ERCOT issued a market notice on February 14, 2021 describing details of the day ahead market clearing process and the reason for Ancillary Service prices that were significantly in excess of the system-wide offer cap for operating day February 15, 2021. ERCOT noted at that time that it had found the Ancillary Service prices to be computed consistent with the ERCOT Protocols, and that ERCOT had not identified a need to correct Ancillary Service prices for the operating day of February 15, 2021. The financial impact of the extended period of high prices caused a number of market participants, many of whom represented load-serving entities, to default on payment obligations to ERCOT. As a result, ERCOT was unable to collect sufficient funds to fully pay other wholesale market participants due payments from ERCOT for power produced during the storm. Load-serving entities incurred significant charges for RDPA Charges and Ancillary Services costs during the Period of Emergency. In response, the Texas Legislature adopted subchapter N to chapter 39 of PURA. Subchapter N enables ERCOT to finance the uplift balance in a manner that will allow wholesale market participants~~

~~who were assessed uplift charges due to consumption during the Period of Emergency to pay those charges over a longer period of time, alleviating liquidity issues and reducing the risk of additional defaults in the wholesale market.~~

~~3.~~2. ERCOT acts as the central counterparty for all transactions settled in the ERCOT wholesale market, meaning that ERCOT is the sole seller to each buyer and ERCOT is the sole buyer from each seller. It is essential for ERCOT to maintain revenue neutrality in serving this function. ERCOT generates no profit, but instead acts as a clearinghouse through which funds are exchanged between buyers and sellers in the ERCOT market. In its role as the central counterparty, ERCOT only financially transacts with market participants registered with ERCOT as a QSE or a Congestion Revenue Rights ("CRR") account holder. ERCOT does not transact directly with load-serving entities. A QSE representing one or more load-serving entities is responsible for communicating with ERCOT on behalf of the load-serving entities. Under the ERCOT protocols, the QSE is also responsible for settling payments and charges with ERCOT on behalf of its load-serving entities.

Application

~~4.~~3. On July 16, 2021, ERCOT filed an application for a debt obligation order pursuant to PURA § 39.653 to approve the uplift balance of up to $2.1 billion, approve the assessment and collection of uplift charges to all load-serving entities (except as expressly exempted under PURA), and securitize the uplift charges and cause the issuance of subchapter N bonds to finance the uplift balance in a principal amount equal to the securitizable amount. The application includes exhibits, schedules, attachments and testimony.

Notice of Application

~~5.~~4. ERCOT provided notice of its application to load-serving entities through ERCOT's existing communication platforms on July 19, 2021.

~~6.~~5. ERCOT provided proof of notice through a filing on July 19, 2021.

~~7.~~6. In Order No. 2 filed on July 29, 2021, the administrative law judge found that ERCOT's notice was reasonable.

Compliance Proceeding

~~8.~~7. In its application, ERCOT requested that the Commission open a separate compliance proceeding in which load-serving entities may submit appropriate documentation evidencing their exposure to qualifying costs and the Commission would determine the amount of each load-serving entity's allocation of amounts for the recovery of Qualifying Costs,

~~9.~~8. On July 28, 2021, Docket No. 52364[45] was opened as a proceeding in which load-serving entities may document their exposure to qualifying costs and submit their election to opt out.

~~10.~~9. The Commission, by Order Severing Issues dated August 19, 2021, determined that Docket No. 52364, will be used as a repository for documentation both of exposure to costs included in the uplift balance and of opt-outs under PURA § 39.653(d) and verification of amounts in that documentation and severed those matters out of this docket and into Docket No. 52364.

~~11.~~10. The Commission also decided that it would address in this docket the process for determining exposure to costs included in the uplift balance, including the documentation required; the process for opting out of uplift charges under PURA § 39.653(d), including the documentation required; and the process for allocating subchapter N bond proceeds if the amount of the total uplift exposure exceeds the statutory cap of $2.1 billion for the uplift balance.

~~12. Upon the conclusion of the submission of the required documentation in Docket No. 52364, the Commission shall issue an order (the "uplift balance Verification Order") stating the amount of the uplift balance and the amount of each load-serving entity's Qualifying LSE Costs and, if applicable, its pro-rated share of the financing proceeds.~~

[45] *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*, Docket No. 52364 (pending).

Intervenors

~~13.~~11. The following parties requested and were granted intervention: AEP Energy Partners; Ambit Texas, LLC; AP Gas & Electric (TX), LLC d/b/a APG&E; Avangrid Renewables, LLC; BP Energy Company; Calpine Corporation; Citigroup Energy Inc.; City of Austin d/b/a Austin Energy; City of Denton; City of Garland; City of Georgetown; City of Lubbock; City of Seguin; Coalition of Competitive Retail Electric Providers; DC Energy Texas, LC; East Texas Electric Cooperative, Inc.; EDF Energy Services, LLC; Energy Trading Institute; Engie Resources LLC and Engie Energy Marketing NA, Inc.; ERCOT; Exelon Generation Company, LLC; Fulcrum Energy d/b/a Amigo Energy, Tara Energy, and Hudson Energy Services, LLC; Gexa Energy LP; Golden Spread Electric Cooperative, Inc.; Just Energy Texas, LP; NRG Energy, Inc.; Lower Colorado River Authority and LCRA WSC Energy; Luminant Energy Company, LLC; Luminant ET Services Company, LLC; Morgan Stanley Capital Group, Inc.; Office of Public Utility Counsel; Rayburn Country Electric Cooperative, Inc.; Shell Energy North America (US), L.P.; South Texas Electric Cooperative; Southern Federal Power LLC; Tenaska Power Services Co., TPS 1, TPS II, TPS III, TPS IV, Tenaska TOPS REP LP, TOPS 1, TOPS 5, TOPS 6, and TOPS 7; Texas Industrial Energy Consumers; Texas Retail Energy LLC; Texpo Power LP; TriEagle Energy LP, TXU Energy Retail Company, LLC; Value Based Brands LLC d/b/a 4Change Energy, Express Energy and Veteran Energy; Vitol Inc.; and 174 Power Global Retail Texas, LLC. Commission Staff also participated in the proceeding.

Testimony

~~14.~~12. The following parties filed testimony in this docket: Calpine Corporation; Coalition of Competitive Retail Electric Providers; Commission Staff; ERCOT; Exelon Generation Company, LLC; Just Energy; NRG Energy, Inc.; Rayburn Country Electric Cooperative, Inc.; Texas Industrial Energy Consumers; TXU LSEs and Luminant Energy (TXU Energy Retail Company, Ambit Texas, Luminant ET Services Company, Trieagle Energy, Value Based Brands, and Luminant Energy Company).

~~15.~~13. ERCOT filed rebuttal testimony on August 20, 2021.

Hearing

~~16.~~14. The Commission held a hearing on ERCOT's application on August 24-25, 2021.

~~17.~~15. Post-hearing briefs were filed on September 1, 2021 and

~~18.~~16. Reply briefs were filed on September 8, 2021.

~~19.~~17. On September 8, 2021, Brazos Electric Cooperative filed a letter stating that it had filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code and that, because the amounts ERCOT claims are due are within the jurisdiction of the federal bankruptcy court, Brazos should be considered opted out for purposes of this docket and the resulting financing and should not be allocated proceeds from the financing or uplift charges.

~~20.~~18. In Order No. 8 filed on September 24, 2021, the administrative law judge directed that the transcript of the hearing be corrected.

Agreement

~~21.~~19. On September 16, 2021, Commission Staff filed a letter stating that an agreement on certain issues had been reached.

~~22.~~20. On September 20, 2021, a nonunanimous agreement that resolved certain issues between the parties that are signatories to the agreement was filed.

~~23.~~21. The parties that entered into the agreement are listed on attachment A of the agreement (the signatories).

~~24.~~22. ERCOT, the Texas Industrial Energy Consumers, and Rayburn Country electric Cooperative only joined in certain paragraphs of the agreement as detailed in the agreement but do not oppose any portion of the agreement.

23. No party opposes the agreement.

24. The agreement provides that subsequent to the execution of the agreement, supporting testimony would be filed in this docket that would include an agreed form of notice to transmission-voltage customers regarding the opt-out notice, and an

agreed form for transmission-voltage customers to opt out, and that the supporting testimony would address agreed deadlines for REPs to provide notice to their transmission-voltage customers regarding the opt-out process and for transmission-voltage customers to file the agreed form to opt out.

25. On September 24, 2021, the testimony of Michael Carter in support of the agreement was filed on behalf of the signatories.

26. On September 28, 2021, the testimony of Carrie Bivens in support of the agreement was filed.

27. On September 28, 2021, the testimony of Kenan Ögelman in support of the agreement was filed.

B. Costs and Amount to be Securitized

1. Uplift balance

28. The agreement provides a comprehensive methodology to calculate the total exposure of each load-serving entity to qualifying costs, adjusted for any transmission level customer of served by that load-serving entity.

29. The uplift balance under the agreed methodology is $2.1 billion.

~~28.~~30. The agreed mythology is appropriate to determine the amount of the uplift balance.

2. Opt out of uplift charges

31. The agreement provides that any load-serving entity or transmission-voltage customer that is eligible to opt out of the uplift charges must declare its status no later than the deadline set by the Commission using the procedures set forth in paragraphs 3-7 of the agreement.

Opt out of transmission-level customers

32. The agreement provides that each retail electric provider (REP) must provide notice to transmission-voltage customers served by that REP regarding the process to opt out, and each transmission-voltage customer that is eligible and chooses to opt out must make a filing in Docket No. 52364 indicating it is opting out by the deadline identified by the Commission. A REP may make this filing on behalf of a

transmission voltage customer if the customer provides written authorization for the REP to do so.

33. The testimony of Carrie Bivens provides the deadline for REPs to send notice to transmission-voltage customers served by that REP regarding the process to opt out as 15 calendar days after the date this Order is signed.

34. The testimony of Ms. Bivens also provides the deadline for entities that have not opted out under this agreement to file in Docket No. 52364 a notice of election to opt out as 45 calendar days after the date of this Order.

35. The testimony of Michael Carter provides a form by which each REP serving eligible transmission-level customers must notify the customer as attachment MC-S-2 to the testimony and states that such notice must be provided within 15 calendar days of the date the Order is signed.

36. The 15-day deadline to provide notice of the opt out procedure to transmission-level customers and the 45-day deadline for a transmission-level customer, or its REP, to file a notice of opt in Docket No. 52364 are an appropriate time to provide such notices.

37. The form provided as attachment MC-S-2 is appropriate notice to provide to eligible transmission-level customers.

Opt out under the agreement

38. The agreement provides that all electric cooperatives and municipally owned utilities may opt out of receiving securitization proceeds and being subject to the associated uplift charges subject to the requirements of chapter 39, subchapter N of PURA, resulting in ERCOT not assessing uplift charges to any current or future load served by electric cooperatives and municipally owned utilities that have opted out.

39. The agreement provides that all electric cooperatives, including their member cooperatives, who are parties to this proceeding and included on attachment B of the agreement are statutorily qualified to opt out and have opted out of receiving

securitization proceeds and being assessed uplift charges pursuant to Chapter 39, Subchapter N of PURA.

40. The electric cooperative, including their member cooperative, identified on attachment B of the agreement have opted out of uplift charges.

~~29.~~41. The agreement provides that municipally owned utilities that are parties to this proceeding are statutorily qualified to opt out and have opted out of receiving securitization proceeds and being assessed uplift charges under Chapter 39, Subchapter N of PURA.

42. The municipally owned utilities listed on attachment B of the agreement have opted out of uplift charges.

43. The agreement provides that other load-serving entities that are parties to this proceeding, as reflected on attachment B to the agreement, and that are statutorily qualified to opt out (as a REP that has the same corporate parent as or as an affiliate to each of the REP's customers) have opted out of receiving securitization proceeds and being assessed uplift charges pursuant to Chapter 39, Subchapter N of PURA.

~~30.~~44. Texas Retail Energy has opted out of uplift charges.

45. The agreement provides that the Order should acknowledge that, without waiving any statutory exemption, the load-serving entities included on attachment B are opting out and need not take further action in this or any other proceeding to effectuate their removal from this securitization and from being subject to the associated uplift charges.

46. The City of Georgetown, who is a municipally owned utility and is a party to this proceeding, did not opt out of uplift charges under the agreement.

Opt out in Docket No. 52364

47. The signatories agrees that, for the City of Georgetown and all load-serving entities eligible to opt out who are not parties to this proceeding and who are not member cooperatives of a party to this proceeding, the Commission' s order in this proceeding will require such load-serving entities to submit the following information to

effectuate their opt out in Docket No. 52364: (1) the LSE's legal name; (2) name and contact information of the load-serving entity's authorized representative at ERCOT; (3) the specific eligibility category for opting out under PURA § 39.653(d); (4) the load-serving entity's Data Universal Numbering System (DUNS) number; (5) the name of the load-serving entity's QSE and that QSE's DUNS number; and (6) confirmation by the load-serving entity or the load-serving entity's QSE that the load-serving entity is in bankruptcy or has no amounts owing to ERCOT for usage during the period of emergency; and that for all non-opt-in-entity (NOIE) load-serving entities that effectuate an opt out in Docket No. 52364, ERCOT will not assess uplift charges to any current or future load served by the NOIE load-serving entities.

48. The testimony of Carrie Bivens provides the deadline for entities that have not opted out under this agreement to file in Docket No. 52364 a notice of election to opt out as 45 calendar days after the date of this Order.

49. The 45-day deadline for load-serving entities to file a notice of opt in Docket No. 52364 is an appropriate amount of time for such notices.

50. The information required in the agreement for the City of Georgetown and all load-serving entities eligible to opt out who are not parties to this proceeding and who are not member cooperatives of a party to this proceeding is the appropriate information needed for such an entity to opt out of uplift charges in Docket No. 52364.

Maintaining opt-out status

51. It is necessary and appropriate that a REP that opts out of uplift charges not gain an undue market advantage by changing the option under which it is certificated at the time it opts out by precluding such opt-out REP from amending its certification to allow service under a different option.

52. Opt out REPs should not be precluded from forming a new entity to enter the market and obtain a REP certificate under any available option, but which will not have opt-out status.

3. Uplift Balance and Distribution of Proceeds

53. The agreement describes the mechanism to determine the amount of proceeds a load-serving entity will receive of the $2.1 billion of proceeds resulting from the financing of the uplift balance.

54. The agreement provides that up to $2.1 billion in securitization proceeds will be allocated to load-serving entities that have not opted out on a load-ratio-share basis using the methodology described and set out in attachment C to the agreement.

55. The agreement provides that the allocation provided for in the agreement and the described methodology in attachment C to the agreement is consistent with the requirements set out in PURA § 39.653 and ensures that eligible entities that opt-out through this agreement or in Docket No. 52364, or that are ineligible, will not be allocated any portion of the securitization proceeds and will not be subject to any uplift charges contemplated under Chapter 39, Subchapter N of PURA.

Affiliate status of REPs

56. The agreement provides that the affiliate status of each REP that is a party or represented by a party in this is properly reflected in attachment C to the agreement, that any REP that is not represented by a party to this proceeding must propose any changes to its resource affiliate status (unaffiliated REP or affiliate REP) no later than the deadline set by the Commission in either this docket or in Docket No. 52364, and that a REP s resource affiliate status will be used to determine the category for which the REP will be allocated funds from the opt-out pool, as described in attachment C to the agreement.

57. The testimony of Carrie Bivens provided the deadline for REPs that are not represented by a party to this proceeding must propose any changes to its resource affiliate status as 30 calendar days after the date this order is signed.

58. The 30-day deadline for REPs that are not represented by a party to this proceeding to propose any changes to its resource affiliate status is appropriate.

Amount and distribution of financing proceeds

59. The agreement provides that the amount of proceeds a load-serving entity will receive will be based on a final calculation provided by ERCOT in Docket No. 52364 using the methodology described in attachment C of the agreement, reflecting actual opt outs of load-serving entities and transmission-voltage customers opt outs as approved in Docket No. 52364.

a. Each REP that is eligible and chooses to receive financing proceeds authorized by this Order will provide ERCOT with the interval-level settlement meter data for each of its transmission-voltage customers, including associated ESIDs, that have opted out.

b. ERCOT will aggregate that interval-level meter data for each REP, adjust for transmission losses and unaccounted-for-energy, and provide the market-wide aggregated data to the parties in Docket No. 52364.

c. ERCOT will calculate the load-ratio share for each load-serving entity as set out in step 1 in attachment C to the agreement and provide the calculation in Docket No. 52364.

d. For each eligible load-serving entity, ERCOT will provide a calculation of total exposure, total exposure adjusted for transmission-voltage-customer opt-outs, and load-ratio share, in accordance with the methodology set forth in attachment C to the agreement and provide the calculations in Docket No. 52364. Each eligible load-serving entity will verify the calculation of its total exposure provided by ERCOT in Docket No. 52364 no later than the deadline established by the Commission.

e. ERCOT will then perform the calculation of the proceeds allocation under the terms of the agreement in accordance with the steps described in attachment C to the agreement. ERCOT will provide documentation of the calculation in Docket No. 52364.

60. The calculation of the load-ratio share for each load-serving entity will use data found in the ERCOT settlement costs.

61. ERCOT can perform the calculations set out in paragraph 10 of the agreement and attachment C to the agreement.

62. Attachment C to the agreement identifies defaulted REPS that have been removed from the market, direct-current ties, and other entities ineligible to receive proceeds.

63. The methodology in the agreement to determine the amount of financing proceeds each load-serving entity that does not opt out and that is not an ineligible entity will receive provides those load-serving entities an appropriate amount of the subchapter N bond proceeds.

64. The testimony of Carrie Bivens provides the deadline for ERCOT to file its calculation of total exposure, total exposure adjusted for transmission-voltage-customer opt-outs, and load-ratio share as 55 days from the date of this Order.

65. Ms. Bivens testimony also provides the deadline for each eligible load-serving entity to verify the calculation of its total exposure as 70 calendar days from the date of this Order.

66. The 55-day deadline for ERCOT to provide its calculations and the 70-day deadline for load-serving entities to verify ERCOT's calculation are appropriate amounts of time for these actions.

67. The uplift balance will be the amount, not to exceed $2.1 billion, that results from using the methodology in the agreement as detail in the testimony of Michael Carter.

68. The methods detailed in the agreement and the testimonies of Michael Carter and Carrie Bivens are appropriate for determining the amount of subchapter N bond proceeds that should be distributed to load-serving entities that have not opted out or are not eligible to receive such proceeds.

69. The agreed methodology will provide a higher proportion of the subchapter N bond proceeds to those load-serving entities that that have a higher risk of liquidity issues.

70. The agreed methodology will ensure that each participating load-serving entity will receive at least 50% of its adjusted total exposure and the higher-risk load-serving entities will receive 100%.

71. The agreed methodology will ensure a lower-risk, prompt, and efficient distribution of subchapter N bond proceeds that will help stabilize the financial position of the load-serving entities and therefore the ERCOT market.

72. By including the pass through of subchapter N bond proceeds or an adjustment of invoices, the agreed methodology further reduces the risk of additional defaults and further financial strain on the ERCOT market.

73. By improving the financial position and lowering the risks of market participants, the ERCOT market will be in a stronger and more stable financial position.

~~31.~~74. The public interest will be served by used of the agreed methodology to distribute subchapter N bond proceeds.

Securitization Proceeds

75. The signatories agreed that each load-serving entity that receives securitization proceeds must (1) provide a refund to customers for any ancillary-service costs in excess of the system-wide offer cap or reliability-deployment-price-adder (RDPA) charges that were passed through and have been paid by the load-serving entity's customers, and (2) adjust customer invoices to remove ancillary-service costs in excess of the system-wide offer cap or RDPA charges that were passed through but have not been paid by the load-serving entity's customers. If a load-serving entity is not allocated 100% of its total exposure, any refunds or adjustments to invoices will be made in an amount that is not less than an amount that is proportionate to the percentage of the load-serving entity's total exposure that was allocated to that load-serving entity. Each load-serving entity that receives securitization proceeds is not required to pass through those proceeds for any ancillary-service costs in excess of the system-wide offer cap or RDPA charges that could have been passed through under a customer' s terms of service and were not, and the load-serving entity will not hold the customer responsible for payment of those ancillary-service costs or RDPA charges.

76. The procedures specified for entities that receive securitization proceeds is necessary and appropriate to ensure that the purposes of this Order are met.

~~32. The term *uplift balance* is defined in PURA, Subchapter N of Chapter 39, as "an amount of money of not more than $2.1 billion that that was uplifted to load-serving entities on a load ratio share basis due to energy consumption during the period of emergency for Qualifying LSE Costs. The term does not include amounts that were part of the prevailing settlement point price during the Period of Emergency. ERCOT cannot readily quantify the uplift balance attributable to each load-serving entity because ERCOT has no way of identifying which load-serving entities were exposed to Qualifying LSE Costs due to the structure of the wholesale market. More specifically, ERCOT charges QSEs for Qualifying LSE Costs, which are then passed on to load-serving entities under the terms of separate agreements with their respective QSE. However, ERCOT is able to provide estimates of the total amounts charged to QSEs.~~

~~33. ERCOT requested that the Commission open a separate compliance proceeding (the "Uplift Balance Proceeding") in which load-serving entities may submit appropriate documentation evidencing their exposure to Qualifying LSE Costs, whereupon the Commission will determine the amount of each load-serving entity's allocation of amounts for the recovery of Qualifying LSE Costs, in an aggregate amount not to exceed the uplift balance. On July 28, 2021, Staff opened Docket No. 52364 as a proceeding in which load-serving entities may document their exposure to Qualifying LSE Costs and submit their election to opt out. The Commission, by Order Severing Issues dated August 19, 2021, determined that "because it is impossible, practically speaking, to address all matters related to the application in this docket, a separate parallel proceeding, Docket No. 52364, will be used as a repository for documentation both of exposure to costs included in the uplift balance and of opt-outs under PURA § 39.653(d) and verification of amounts in that documentation. To the extent necessary, the Commission severs those matters out of this Docket and into Docket No. 52364." The Commission also ordered that it "will address in this docket the process for determining exposure to costs included in the uplift balance, including the documentation required; the process for opting out of uplift charges under PURA § 39.653(d), including the documentation~~

required; and the process for allocating bond proceeds if the amount of the total uplift exposure exceeds the statutory cap of $2.1 billion for the uplift balance." Upon the conclusion of the submission of the required documentation in Docket No. 52364, the Commission shall issue an order (the "Uplift Balance Verification Order") stating the amount of the uplift balance and the amount of each load-serving entity's Qualifying LSE Costs and, if applicable, its pro-rated share of the financing proceeds.

34. Pursuant to PURA § 39.653(d), a one-time process must be developed to allow qualifying load-serving entities to opt-out of paying uplift charges and receiving proceeds of the uplift financing. The Commission finds that the process for opting out, including the documentation required shall be as follows: [INSERT COMMISSION DECISION ON PROCESS AND DOCUMENTS FOR OPTING OUT]

35. Intervenor Rayburn Country Electric Cooperative ("Rayburn") requested in its post hearing briefing that if Rayburn is not entitled to receive proceeds of the uplift financing, the Commission find that Rayburn is not subject to or is deemed to have opted out of uplift charges. On September 10, 2021, Brazos Electric Cooperative, Inc. ("Brazos) filed a letter in this proceeding requesting that Brazos "be considered 'opted out' for purposes of this Docket and the resulting financing, with Brazos Electric being allocated neither proceeds nor uplift charges arising from Docket No. 52322." The Commission will consider the Brazos letter, and, to the extent necessary, opens the record for the limited purpose of receiving the letter. The Commission finds that Rayburn and Brazos are not eligible to receive proceeds from the uplift financing and will be deemed to have opted out under PURA § 39.653(d).

36. [INSERT COMMISSION FINDINGS REGARDING "THE PROCESS FOR DETERMINING EXPOSURE TO COSTS TO INCLUDED IN THE UPLIFT BALANCE" (i.e., "netting"), "INCLUDING THE DOCUMENTATION REQUIRED"]

~~37. [INSERT COMMISSION FINDINGS REGARDING "THE PROCESS FOR ALLOCATING BOND PROCEEDS IF THE AMOUNT OF THE TOTAL UPLIFT EXPOSURE EXCEEDS THE STATUTORY CAP OF $2.1 BILLION FOR THE UPLIFT BALANCE."]~~

~~1.~~4. Upfront Costs and Ongoing Costs

77. ERCOT has requested authorization to finance and pay for its upfront costs from the proceeds of the subchapter N bonds in accordance with this Order.

78. Upfront costs ~~may~~ include (a) the cost of original issue discount, credit enhancements and other arrangements to enhance marketability; (b) the cost of ERCOT's financial advisor; (c) SEC registration fees, underwriters' fees, rating agency fees, and attorneys' fees; (d) any costs incurred by ERCOT, including costs related to the establishment and maintenance of BondCo~~(s)~~; (e) any other costs incurred by ERCOT in connection with the implementation of this Order; and (f) any costs incurred by ERCOT if this Order is appealed.

79. The actual upfront costs to be paid from the proceeds of the subchapter N bonds will not be known until the subchapter N bonds are issued.

80. The form issuance advice letter contains sections for the estimated upfront costs to be paid from the proceeds of the subchapter N bonds. ERCOT's best estimate of the upfront costs associated with the issuance of each series of subchapter N bonds is to be specified in the issuance advice letter attached to this Order delivered by ERCOT in connection with the issuance of such series of subchapter N bonds.

81. ERCOT will update the amount of such upfront costs in the issuance advice letter to reflect more current information available to ERCOT prior to the issuance of the subchapter N bonds.

~~38.~~82. The Commission may incur costs to engage its representative and such cost are necessary and appropriate to include in upfront costs to ensure that the Commission may properly exercise its role in the issuance of subchapter N bonds.

83. ~~As permitted under Subchapter N,~~ ERCOT has requested authorization to recover reasonable ongoing costs of maintaining and servicing subchapter N bonds through uplift charges, as provided in this Order.

84. Ongoing costs are a cost to repay amounts financed under Subchapter N as authorized by this Order.

85. The actual ongoing costs of administering and servicing the subchapter N bonds will not be known until the subchapter N bonds are issued.

86. The form issuance advice letter attached to this Order contains sections for the estimated ongoing costs to be paid from the assessment of uplift charges.

87. The amount of ongoing costs will be updated in the issuance advice letter to reflect more current information available to ERCOT prior to the issuance of the subchapter N bonds.

~~39.~~88. ERCOT's best estimate of the ongoing costs associated with the issuance of each series of subchapter N bonds is to be specified in the issuance advice letter delivered by ERCOT in connection with the issuance of such series of subchapter N bonds.

~~40.~~89. The financing of upfront costs to be paid from the proceeds of the subchapter N bonds, as well as the assessment of uplift charges for the payment of ongoing costs associated with the subchapter N bonds as described in this Order are reasonable and necessary in connection with the implementation of this Order and the proposed financing transactions, and should therefore be approved.

~~2.~~5. Amounts to be Securitized

~~41.~~90. ERCOT has requested authority to securitize uplift charges and cause the issuance of subchapter N bonds to finance an amount ~~the securitizable amount, which consists of~~consiting of the following items: (a) the uplift balance in an amount of up to $2.1 billion, plus (b) the upfront costs associated with the issuance of the subchapter N bonds. This amount is reference in this Order as the securitizable amount.

~~42.~~91. It is necessary and appropriate to authorize ERCOT to cause subchapter N bonds to be issued in an aggregate principal amount not to exceed the securitizable amount, subject to the issuance-advice-letter process described in this Order.

~~43.~~92. The issuance of subchapter N bonds as provided in this Order is necessary and appropriate to support the financial integrity of the wholesale market and to protect the public interest considering the impact on both wholesale-market participants and retail customers.

~~44.~~93. Entry of this Order will allow load-servicing entities that were assessed extraordinary uplift charges due to consumption during the period of emergency to pay those charges over a longer period of time, alleviating liquidity issues and reducing the risk of additional defaults in the wholesale market.

~~3.~~6.Issuance Advice Letter

94. Under ERCOT's proposed financing, ERCOT will submit a draft issuance advice letter in the form attached to this Order as attachment A to Commission Staff for review not later than two weeks prior to the expected date of the commencement of marketing or sale of each series of subchapter N bonds.

~~45.~~95. ~~Within~~ No later than one week after receipt of the draft issuance advice letter, Commission staff will provide ERCOT comments and recommendations regarding the adequacy of the information provided. ~~Provided however, the Commission staff may elect to expedite their review and provide comments and recommendations to ERCOT more quickly.~~

96. Because the actual structure and pricing of the subchapter N bonds will not be known at the time this Order is issued, following determination of the final terms of the subchapter N bonds and prior to issuance of the subchapter N bonds, ERCOT will file with the Commission for each series of subchapter N bonds issued, and no later than 24 hours after the pricing of that series of subchapter N bonds, a final issuance advice letter.

97. The form issuance advice letter contains sections for the estimated upfront costs to be paid from the proceeds of the subchapter N bonds.

98. Within 60 days of issuance of the subchapter N bonds, ERCOT will submit to the Commission a final accounting of the total upfront costs with respect to such issuance.

99. The issuance advice letter will report the actual dollar amount of the initial uplift charges and other information specific to the subchapter N bonds issued.

~~46.~~100. All amounts that require computation will be computed using the mathematical formulas contained in the form of the issuance advice letter.

~~47.~~101. Commission Staff may request revisions to the draft issuance advice letter as necessary to ensure that the requirements of PURA and this Order have been met.

~~48.~~102. The initial uplift charges and the final terms of the subchapter N bonds set forth in the issuance advice letter will become effective on the date of issuance of the subchapter N bonds, which will not occur prior to the fifth business day after pricing unless prior to noon on the fourth business day after pricing the Commission issues an order finding that the proposed issuance does not comply with the requirements of PURA or this Order.

~~49.~~103. If the actual upfront costs payable from the proceeds of the subchapter N bonds as indicated in ERCOT's issuance advice letter are less than the upfront costs included in the amount allocated therefor from the proceeds of the subchapter N bonds, the periodic billing requirement, for the first ~~semi-annual~~quarterly true-up adjustment will be reduced by the amount of such unused funds, together with interest, if any, earned on the investment of such funds.

~~50.~~104. If the actual upfront costs payable from the proceeds of the subchapter N bonds as indicated in ERCOT's issuance advice letter are more than the upfront costs included in the amount allocated therefor from the proceeds of the subchapter N bonds, the periodic billing requirement for the first ~~semi-annual~~quarterly true-up adjustment will be increased by the amount necessary for the payment of such excess costs.

~~51.~~105. The completion and filing of an issuance advice letter in the form attached to this Order as attachment A, including the certification from ERCOT, is necessary and

appropriate to ensure that any securitization actually undertaken by ERCOT complies with the terms of this Order.

~~52.~~106. The certification statement contained in ERCOT's certification letter will be worded identically to the statement in the form of the issuance advice letter attached to this Order. Other aspects of the certification letter may be modified to describe the particulars of the subchapter N bonds and the actions that were taken during the transaction.

C. Structure of the Proposed Financing

1. BondCo.

Creation and Structure

107. ~~For purposes of this securitization,~~ ERCOT ~~shall~~ proposed to create one or more special purpose funding entities (each of which is referred to as "BondCo"~~), which shall be~~as a Delaware limited liability company with ERCOT as its sole member.

108. BondCo will be formed for the limited purpose of (a) imposing, collecting and receiving uplift charges and acquiring uplift property and related assets to support its obligations under the subchapter N bonds, (b) issuing subchapter N bonds in one or more series, and (c) performing other activities relating thereto or otherwise authorized by this Order.

~~53.~~109. BondCo ~~shall not be permitted~~will not have authority to engage in any other activities and will have no assets other than as contemplated in this Order and related assets to support its obligations under the subchapter N bonds. Obligations relating to the subchapter N bonds will be BondCo's only significant liabilities.

~~54.~~110. If ERCOT determines it to be necessary to achieve the lowest overall uplift charges consistent with market conditions, ERCOT may cause BondCo to be organized and managed in a manner designed to achieve the objective of maintaining BondCo as a bankruptcy-remote entity that would not be affected by the bankruptcy of ERCOT or any other affiliates of ERCOT or any of their respective successors.

~~55.~~111. ERCOT may also cause BondCo to have at least one independent manager whose approval will be required for certain major actions or organizational changes by BondCo.

~~56.~~112. BondCo may also be restricted from amending the provisions of the organizational documents that relate to bankruptcy-remoteness of BondCo without the consent of the independent manager.

113. BondCo may also be restricted from instituting bankruptcy or insolvency proceedings or from consenting to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert, or merge without the consent of the independent manager.

114. Other restrictions to facilitate bankruptcy-remoteness may also be included in the organizational documents of BondCo, as applicable under rating agency considerations.

Capital of Bondco

~~57.~~115. The initial capital of BondCo will be a nominal amount of $100. If necessary to maintain status as a bankruptcy remote entity or to preserve ERCOT's status as an exempt 501(c)(4) organization under applicable federal tax and securities laws with respect to any issuance of subchapter N bonds, then as a condition to ~~such~~ the issuance of subchapter N bonds, BondCo will secure the minimum capital as may be required in accordance with such laws and regulations then in effect.

116. As a condition to accepting any issuance advice letter relating to any issuance of subchapter N bonds in a public or private offering, the Commission may require such documentation, opinions, or other assurances as may be reasonably necessary to ensure that the applicable capitalization requirements have been met.

Issuance of Bonds

~~58.~~117. Concurrently with the issuance of any of the subchapter N bonds, ERCOT will transfer and assign to BondCo all of ERCOT's rights under this Order related to the amount of subchapter N bonds to be issued by BondCo, including rights to impose, collect, and receive uplift charges approved in this Order. ~~Such rights shall~~

~~constitute a present property right for purposes of contracts concerning the sale or pledge of property, and shall become "Uplift Property" concurrently with the sale or assignment to BondCo as provided in PURA § 39.662. By virtue of~~After the transfer, BondCo ~~shall acquire~~will have all of the right, title, and interest of ERCOT in the uplift property arising under this Order that is related to the amount of subchapter N bonds issued by BondCo.

~~59.~~118. ~~BondCo will issue one or more~~For each series of subchapter N bonds consisting of one or more tranches~~.~~, BondCo will pledge to the indenture trustee, as collateral for payment of the subchapter N bonds, the uplift property, including BondCo's right to receive the uplift charges as and when collected, and certain other collateral described in ERCOT's application.

~~60.~~119. The use and proposed structure of BondCo and the limitations related to its organization and management are necessary and appropriate to minimize risks related to the proposed financing transactions and to minimize the uplift charges. ~~Therefore, the use and proposed structure of BondCo should be approved.~~

~~61.~~120. It is necessary and appropriate that ERCOT structure Bondco in the manner that will result in lowest overall uplift charges consistent with market conditions

2. Credit Enhancement and Arrangements to Enhance Marketability

121. ERCOT requested approval to use additional forms of credit enhancement—including letters of credit, reserve accounts, surety bonds, or guarantees—and other mechanisms designed to promote the credit quality and marketability of the subchapter N bonds if the benefits of such arrangements exceed their cost.

122. ERCOT also asked that the costs of any credit enhancements as well as the costs of arrangements to enhance marketability be included in the amount of upfront costs to be securitized.

~~62.~~123. ~~If~~ Except for the collection account and its subaccounts, if the use of original issue discount, credit enhancements, or other arrangements is proposed by ERCOT, ERCOT will provide the Commission's designated representative copies of all cost-benefit analyses performed by or for ERCOT that support the request to use such

arrangements. ~~This finding does not apply to the collection account or its subaccounts approved in this Order, and/or described in the final issuance advice letter.~~

~~63.~~124. ERCOT's proposed use of credit enhancements and arrangements to enhance marketability is customary and ~~should be approved~~is necessary and appropriate to provide the best credit quality and marketability of the subchapter N bonds, provided that ERCOT certifies that the enhancements or arrangements provide benefits greater than their cost and that such certifications are agreed to by the Commission's designated representative.

3. Uplift Property

~~64. Under PURA § 39.662(a), the rights and interests of ERCOT or its successor under this Order, including the right to impose, collect, and receive the uplift charges authorized in this Order, are only contract rights until they are first transferred to an assignee or pledged in connection with the issuance of subchapter N bonds, at which time they shall become Uplift Property.~~

125. PURA § 39.662(a) states that the rights to impose, collect, and receive the uplift charges approved in this Order along with the other rights arising pursuant to this Order will become uplift property upon the transfer of such rights by ERCOT to BondCo.

126. If subchapter N bonds are issued in more than one series, then the uplift property transferred as a result of each issuance will be only those rights associated with that portion of the uplift property securitized by such issuance.

~~65.~~127. The rights to impose, collect and receive uplift charges along with the other rights arising under this Order as they relate to any portion of the total amount authorized to be securitized that remains unsecuritized will remain with ERCOT and shall not become uplift property unless and until transferred to a BondCo in connection with a subsequent issuance of subchapter N bonds.

~~66. Under PURA § 39.662(b), Uplift Property constitutes a present property right for purposes of contracts concerning the sale or pledge of property, even though the~~

~~imposition and collection of uplift charges depends on further acts of ERCOT or others that have not yet occurred.~~

~~67.~~128. Uplift property and all other collateral will be held and administered by the indenture trustee in accordance with the indenture, as described in ERCOT's application. This structure is customary for securitized debt and pledged collateral, and ~~will help~~is necessary and appropriate to ensure that the lowest uplift charges will be achieved~~, and should therefore be approved~~.

4. Servicer and Servicing Agreement

129. ERCOT proposes to execute a servicing agreement with BondCo. The servicing agreement may be amended, renewed or replaced by another servicing agreement.

130. The entity responsible for carrying out the servicing obligations under any servicing agreement is the servicer.

131. ERCOT will be the initial servicer but may be succeeded as servicer by another entity under certain circumstances detailed in the servicing agreement and as authorized by the Commission in accordance with this Order.

132. ~~The~~ A replacement servicer will not begin providing service until the date the Commission approves the appointment and the servicing fee of such replacement servicer.

~~68.~~133. Under the servicing agreement, the servicer is required~~, among other things,~~ to impose and collect the applicable uplift charges for the benefit and account of BondCo, to make the periodic true-up adjustments of uplift charges required or allowed by this Order, and to account for and remit the applicable uplift charges to or for the account of BondCo in accordance with the remittance procedures contained in the servicing agreement without any charge, deduction or surcharge of any kind, other than the servicing fee specified in the servicing agreement.

~~69.~~134. Under the terms of the servicing agreement, if any servicer fails to perform its servicing obligations in any material respect, the indenture trustee acting under the indenture to be entered into in connection with the issuance of the subchapter N

bonds, or the indenture trustee's designee, may, or, upon the instruction of the requisite percentage of holders of the outstanding amount of subchapter N bonds, will appoint an alternate party to replace the defaulting servicer, in which case the replacement servicer will perform the obligations of the servicer under the servicing agreement.

~~70.~~135. The obligations of the servicer under the servicing agreement and the circumstances under which an alternate servicer may be appointed will be fully described in the servicing agreement.

~~71.~~136. The rights of BondCo under the servicing agreement will be included in the collateral pledged to the indenture trustee under the indenture for the benefit of holders of the subchapter N bonds.

~~72.~~137. The servicing agreement negotiated as part of any financing under this Order will contain a recital clause that the Commission, or its attorney, may enforce the servicing agreement for the benefit of Texas wholesale-market participants or their customers to the extent permitted by law.

~~73.~~138. The servicing agreement negotiated as part of this securitization will include a provision that ERCOT indemnify the Commission in connection with any increase in servicing fees that become payable as a result of a default resulting from ERCOT's willful misconduct, bad faith or negligence in performance of its duties or observance of its covenants under the servicing agreement. ~~The indemnity shall~~ can ~~be enforced by the Commission but shall not~~cannot ~~be enforceable by any wholesale market participant.~~

139. The obligations to continue to provide service and to collect and account for uplift charges will be binding upon ERCOT and its successors.

140. It is necessary and appropriate that the servicing agreement require the assessment of uplift charges in the manner required by this Order.

~~74. The uplift charges must be assessed on all load-serving entities (except as provided in PURA §§ 39.653(c) and (d) and 39.151(j-1)), including wholesale-market~~

~~participants who are in default but still participating in the wholesale market, and wholesale market participants who enter the market after this Order is issued.~~

~~75. In addition, the uplift charges may be based on periodically updated transaction data to prevent wholesale market participants from engaging in behavior designed to avoid the uplift charges. The Commission shall enforce the obligations imposed by this Order, its applicable substantive rules, and statutory provisions.~~ [Note: these two findings were moved to findings 176 and 177 in section 8, uplift charges.]

~~76.~~141. The servicing arrangements described in this Order are reasonable, ~~will~~ and are necessary and appropriate to reduce risk associated with the proposed financing, ~~and will, therefore,~~ result in lower uplift charges, and ~~will help to~~ support the financial integrity of the wholesale market and are necessary to protect the public interest ~~and should be approved~~.

5. Subchapter N Bonds

142. BondCo will issue and sell subchapter N bonds in one or more series, and each series may be issued in one or more tranches.

~~77.~~143. The legal final maturity date of any series of subchapter N bonds will not exceed 30 years from the date of issuance of the first series of subchapter N bonds. The legal final maturity date of each series and tranche within a series and amounts in each series will be finally determined by ERCOT and the Commission's designated representative, consistent with market conditions, at the time the subchapter N bonds are priced, but subject to ultimate Commission review through the issuance advice letter process.

144. ERCOT will retain sole discretion regarding whether or when to assign, sell, or otherwise transfer any rights concerning uplift property arising under this Order, or to cause the issuance of any subchapter N bonds authorized in this Order, subject to the right of the Commission to find that the proposed issuance does not comply with the requirements of PURA and this Order.

~~78.~~145. BondCo will issue the subchapter N bonds on or after the fifth business day after pricing of the subchapter N bonds unless, prior to noon on the fourth business day

following pricing of the bonds, the Commission issues an order finding that the proposed issuance does not comply with the requirements of PURA and this Order.

~~79.~~146. The Commission finds that the proposed structure—providing substantially level annual debt service and revenue requirements over the expected life of the subchapter N bonds—is in the public interest and should be used. This structure is reasonable and should be approved, provided that the issuance advice letter demonstrates that all of the statutory requirements are met.

6. Security for the Subchapter N Bonds

~~80.~~147. The payment of the subchapter N bonds and related charges authorized by this Order will be secured solely by uplift charges explicitly assessed to repay the subchapter N bonds and other collateral as described in the application.

~~81.~~148. Each series of the subchapter N bonds will be issued pursuant to an indenture administered by the indenture trustee.

~~82.~~149. The indenture will include provisions for a collection account for the series and subaccounts for the collection and administration of the uplift charges and payment or funding of the principal and interest on the subchapter N bonds and other costs, including ongoing fees and expenses, in connection with the subchapter N bonds.

Collection Account

~~83.~~150. Under the indenture, BondCo will establish a collection account as a trust account to be held by the indenture trustee as collateral to ensure the payment of the principal, interest, and other costs approved in this Order related to the subchapter N bonds in full and on a timely basis.

~~84.~~151. The collection account will include a general subaccount, a capital subaccount, and an excess funds subaccount, and may include other subaccounts.

(a) The General Subaccount

~~85.~~152. The indenture trustee will deposit the uplift charges ~~remittances that~~remitted by the servicer ~~remits~~ to the indenture trustee for the account of BondCo into one or more segregated trust accounts and allocate the amount of those remittances to the general subaccount. The indenture trustee will on a periodic basis apply moneys in this

subaccount to pay expenses of BondCo, to pay principal and interest on the subchapter N bonds, and to meet the funding requirements of the other subaccounts.

~~86.~~153. The funds in the general subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds, including, to the extent necessary, investment earnings, will be applied by the indenture trustee to pay principal and interest on the subchapter N bonds and all other components of the periodic payment requirement in accordance with the terms of the indenture and this Order.

(b) The Capital Subaccount

154. If in connection with the issuance of any series of subchapter N bonds, ERCOT determines it to be necessary to establish capital reserves to achieve the lowest overall financing cost, ERCOT may make a capital contribution to BondCo for that series, which BondCo will deposit into the capital subaccount.

~~87.~~155. The amount of the capital contribution is expected to be not less than the required percentage of the original principal amount of each series of subchapter N bonds, as determined under applicable tax and securities laws and regulations and applicable rating agency considerations.

~~88.~~156. The capital subaccount will serve as collateral to ensure timely payment of principal and interest on the subchapter N bonds and all other components of the periodic payment requirement.

~~89.~~157. Any funds drawn from the capital account to pay these amounts due to a shortfall in the uplift-charge remittances will be replenished through future uplift-charge remittances.

~~90.~~158. The funds in this subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds, including investment earnings, will be used by the indenture trustee to pay principal and interest on the subchapter N bonds and all other components of the periodic payment requirement.

~~91.~~159. Upon payment of the principal amount of all subchapter N bonds and the discharge of all obligations that may be paid by use of uplift charges, all amounts in the capital subaccount, including any investment earnings, will be released to BondCo for further remittance to ERCOT.

~~92.~~160. Investment earnings in ~~this~~ the capital subaccount may be released earlier in accordance with the indenture.

~~93.~~161. The capital contribution to BondCo will be funded by ERCOT, in an amount upfront and also over time, if beneficial for the debt treatment of the transaction for federal tax purposes.

162. To ensure that wholesale-market participants receive the appropriate benefit from the securitization approved in this Order, the proceeds from the sale of the subchapter N bonds ~~should~~ will not be applied towards this capital contribution.

163. Because ERCOT funds the capital subaccount, it is appropriate that ERCOT ~~should~~ receive the investment earnings earned through the indenture trustee's investment of that capital from time to time.

~~94. Upon payment of the principal amount of all subchapter N bonds and the discharge of all obligations that may be paid by use of uplift charges, all amounts in the capital subaccount, including any investment earnings, will be released to BondCo for payment to ERCOT. Investment earnings in this subaccount may be released earlier in accordance with the terms of the indenture.~~ [Note: this finding duplicates findings 158 and 159.]

(c) The Excess Funds Subaccount

~~95.~~164. The excess-funds subaccount will hold any uplift-charge remittances and investment earnings on the collection account, other than earnings attributable to the capital subaccount and released under the terms of the indenture, in excess of the amounts needed to pay current principal and interest on the subchapter N bonds and to pay other periodic payment requirements, including, but not limited to, replenishing the capital subaccount.

~~96.~~165. Any balance in or allocated to the excess-funds subaccount on a true-up adjustment date will be subtracted from the periodic billing requirement for purposes of the true-up adjustment.

~~97.~~166. The money in this subaccount will be invested by the indenture trustee in short-term high-quality, investments, and such money, including investment earnings thereon, will be used by the indenture trustee to pay principal and interest on the subchapter N bonds and other periodic payment requirements.

(d) Other Subaccounts

~~98.~~167. Other credit enhancements in the form of subaccounts may be utilized for any issuance of subchapter N bonds. For example, ERCOT does not propose use of an over-collateralization subaccount. If ERCOT subsequently determines, however, that use of an over-collateralization subaccount or other subaccount are necessary to obtain the highest possible ratings or shall otherwise increase the benefits of the securitization, ERCOT may implement such subaccounts to reduce subchapter N bonds charges.

7. General Provisions

~~99.~~168. The collection account and the subaccounts described above are intended to provide for full and timely payment of scheduled principal and interest on the subchapter N bonds and all other components of the periodic payment requirement.

~~100.~~169. If the amount of uplift charges remitted to the general subaccount is insufficient to make all scheduled payments of principal and interest on the subchapter N bonds and to make payment on all of the other components of the periodic payment requirement, the excess funds subaccount and the capital subaccount will be drawn down, in that order, to make those payments.

~~101.~~170. Any deficiency in the capital subaccount because of such withdrawals must be replenished to the capital subaccount on a periodic basis through the true-up process.

~~102.~~171. Additional accounts and subaccounts may be necessary to segregate amounts received from various sources (e.g., amounts received from wholesale-

market participants), or to be used for specified purposes. Such accounts will be administered and utilized as set forth in the servicing agreement and the indenture.

~~103.~~172. Upon the maturity of the subchapter N bonds and the discharge of all obligations in respect thereof, remaining amounts in the collection account, other than amounts that were in the capital subaccount, will be released to BondCo and equivalent amounts will be credited by ERCOT to load-serving entities consistent with this Order.

~~104.~~173. The use of a collection account and its subaccounts in the manner proposed by ERCOT is customary and is reasonable, necessary, and appropriate to lower risks associated with the financing and ensure that the lowest uplift charges under Subchapter N will be achieved.

8. Uplift Charges – Allocation, Collection, Nonbypassability

174. ERCOT seeks authorization to allocate and collect from qualified scheduling entities (QSEs) representing load-serving entities within the ERCOT wholesale market, in the manner provided in this Order, uplift charges in an amount sufficient to ensure the recovery of amounts expected to be necessary to timely provide all payments of debt service and other required amounts and charges in connection with the subchapter N bonds approved in this Order.

175. It is necessary and appropriate that uplift charges are in a sufficient amount to pay principal and interest, or deposits to sinking funds in respect of principal and interest, on the subchapter N bonds and any other amounts due in connection with the subchapter N bonds, including ongoing fees and expenses and amounts required to be deposited in or allocated to any collection account or subaccount, trustee indemnities, payments due in connection with any expenses incurred by the indenture trustee or the servicer to enforce bondholder rights and other payments that may be required in accordance with the waterfall payments set forth in the indenture, during the period for which such uplift charges are to be in effect.

176. It is necessary and appropriate that uplift charges are sufficient to ensure the recovery of amounts necessary to timely provide all payments of debt service and other required amounts and charges in connection with the subchapter N bonds.

~~105.~~177. It is necessary and appropriate for ERCOT to recover the ongoing costs associated with servicing and administering subchapter N bonds through uplift charges because those servicing and administrative costs are a cost to repay amounts financed under Subchapter N~~.~~, ~~Ongoing servicing and administration costs~~ are necessary and unavoidable costs of financing the subchapter N bonds under PURA~~.~~, and ~~The payment of ongoing costs from uplift charges is~~ are needed to ensure that the necessary costs to service the subchapter N bonds will be covered.

~~106.~~178. The uplift charges must be assessed on all load-serving entities ~~(except as provided in PURA §§ 39.653(c) and (d) and 39.151(j-1))~~in accordance with this Order, including wholesale-market participants who are in default but still participating in the wholesale market, and wholesale-market participants who enter the market after this Order is issued. [Note, findings 177 and 178 moved from section 5, servicer and servicing agreement.]

~~107.~~179. ~~In addition, the uplift~~Uplift charges may be based on periodically updated transaction data to prevent wholesale-market participants from engaging in behavior designed to avoid the uplift charges. ~~The Commission shall enforce the obligations imposed by this Order, its applicable substantive rules, and statutory provisions.~~

180. ERCOT proposed that the subchapter N bonds have a scheduled final payment date of not more than 30 years from the date of the first issuance of subchapter N bonds. However, amounts assessed during such 30-year period may still need to be recovered after the final payment date. ~~PURA § 39.653(b) prohibits the assessment of uplift charges for a period of time that exceeds thirty (30) years from the date of the first issuance of subchapter N bonds. This restriction does not, however, prevent the recovery of amounts due at the end of such 30-year period for charges assessed during such 30-year period.~~

181. It is appropriate and necessary that amounts assessed before a scheduled final payment date be collected even after the final payment date.

~~108.~~182. The initial uplift charges will be implemented no sooner than the first month following the initial issuance of the subchapter N bonds.

Assessment to QSEs

~~109.~~183. ERCOT proposed that uplift charges be assessed to all QSEs that represent load-serving entities on a load ratio share basis, including the load of load-serving entities entering the market after the implementation of this Order, but excluding the load of load-serving entities who have ~~qualified to~~ opted-out of uplift charges ~~pursuant to the one-time opt-out procedure described in findings of fact 12 and 13 of~~as provided by this this Order. Load-serving entities who have not opted out or are ineligible or exempt from uplift charges are referred to in this Order as obligated LSEs.

184. ERCOT proposed creating a new daily settlement invoice for uplift charges. Uplift charges will be assessed and collected in accordance with the billing and collection standards for wholesale-market participants are as set forth in the ERCOT protocols, as the same may be modified from time to time.

185. It is appropriate and necessary for ERCOT ~~shall~~ to develop and adopt new ~~Protocol~~ nodal protocol provisions governing the assessment and collection of uplift charges. [need ordering paragraph]

Uplift-Charges Assessment Methodology

~~110.~~186. ~~ERCOT, acting as servicer, and any subsequent servicer,~~The servicer will assess uplift charges to each QSE that represents one or more obligated LSEs based on the load ratio share of the obligated LSEs represented by the QSE~~, as required by PURA § 39.653(c)~~. Because the load ratio share of individual obligated LSEs will change daily based upon actual load and as obligated LSEs enter and exit the market from time to time, ERCOT proposed that the load ratio share used to assess uplift charges to QSEs be updated on a daily basis based upon on the actual load. The methodology to be utilized by ~~ERCOT, or any subsequent servicing entity,~~the

servicer for the assessment of uplift charges is referenced in this Order as the uplift-charges assessment methodology and is set forth immediately below ~~(the "Uplift Charges Assessment Methodology")~~:

a. ~~ERCOT (or any subsequent servicing entity)~~The servicer will determine the periodic billing requirement that must be billed for any given period. The periodic billing requirement will be updated at least annually, and on an interim basis from time to time in accordance with the true-up procedures described in this Order.

b. ~~ERCOT (or any subsequent servicing entity)~~The servicer will amortize the periodic billing requirement daily for the given period. This amount is referenced in this Order as the daily amortization amount.

c. ~~ERCOT (or any subsequent servicing entity)~~The servicer will assess the daily amortization amount to each QSE as a daily charge, based upon the initial settlement data for the load ratio share of each obligated LSE represented by the QSE.

187. The periodic payment requirement is the required periodic payment for a given period (i.e., annually, semi-annually, or quarterly) due under the subchapter N bonds. Each periodic payment requirement includes (a) the principal amortization of the subchapter N bonds in accordance with the expected amortization schedule, including deficiencies of previously scheduled principal for any reason; (b) periodic interest on the subchapter N bonds, including any accrued and unpaid interest; and (c) ongoing costs consisting of the servicing fee, rating agencies' fees, trustee fees, legal and accounting fees, and other ongoing fees and expenses.

~~111.~~188. The initial periodic payment requirement for the subchapter N bonds issued under this Order will be updated in the issuance advice letter.

~~112.~~189. The periodic billing requirement is the aggregate dollar amount of uplift charges that must be billed during a given period (i.e., annually, semi-annually, or quarterly) so that the uplift-charge collections are sufficient to meet the sum of all periodic payment requirements for that period, and also taking into account (a) forecast usage data for the period; (b) forecast uncollectibles for the period; (c)

forecast lags in collection of billed uplift charges for the period; and (d) total potential exposure.

190. ERCOT ~~will require~~requested that each QSE representing one or more obligated LSEs be required to post collateral equal to four months of its projected uplift charges and that, if an obligated LSE exits the market prior to the amortization of the uplift balance debt, that ERCOT will retain the collateral held for the QSE that represents that obligated LSE to the extent necessary to account for unpaid uplift charges.

191. If any QSE representing the interests of any obligated LSE defaults on or disputes the payment of any uplift charges, then ERCOT, or any subsequent holder of the uplift property, will be entitled to exercise any remedies and take any action in accordance with PURA, Commission Substantive Rules, a Commission Order, or the ERCOT protocols then in effect.

~~113.~~192. Two months of projected uplift charges for each obligated LSE is the appropriate amount of collateral that ERCOT may require from QSEs representing obligated LSEs.

193. The billing and collection standards, Uplift Charges Assessment Methodology, remedies, and other procedures described in this Order are reasonable, necessary, and appropriate for the assessment and collection of uplift charges sufficient to support the timely payment of principal and interest on the subchapter N bonds and any other amounts due in connection with the subchapter N bonds, to lower risks associated with the collection of uplift charges, to lower subchapter N bonds charges, to support the financial integrity of the wholesale market, and to protect the public interest.

~~114.~~194. It is appropriate and necessary for ERCOT to develop and adopt new Protocol provisions to the extent necessary to prevent wholesale market participants from engaging in behavior designed to avoid default charges, including leaving and reentering the market.

9. Mandatory True-Up of Uplift Charges

195. PURA § 39.657~~,~~ states that a debt obligation order must include a mechanism requiring that ~~the~~ uplift charges ~~will~~ be reviewed and adjusted at least annually, to correct any under-collections or over-collections during the preceding 12 months, and ensure the expected recovery of amounts sufficient to timely provide all payments of ~~principal and interest (or deposits to sinking funds in respect of principal and interest) on the subchapter N bonds and any other amounts due in connection with the subchapter N bonds (including ongoing fees and expenses and amounts required to be deposited in or allocated to any collection account or subaccount, trustee indemnities, payments due in connection with any expenses incurred by the Indenture Trustee or the servicer to enforce bondholder rights and other payments that may be required pursuant to the waterfall payments set forth in the indenture) during the period for which such uplift charges are to be in effect.~~debt service and other required amounts and charges in connection with the debt obligation order.

~~115.~~196. It is reasonable and necessary that uplift charges be reviewed and adjusted each quarter following the closing of any series of bonds as provided in this Order.

~~116.~~197. With respect to any series of subchapter N bonds, ~~the Annual True-Up~~ERCOT proposed that ~~of~~ uplift charges ~~will be calculated pursuant~~be reviewed and adjusted using ~~to~~ the ~~standard~~ true-up procedure described and reference in ~~Findings of Fact Paragraph 68 of~~ this Order as(the standard true-up procedure. The servicer ~~shall~~ will make adjustment filings related to ~~the Annual True-Up~~each quarterly true up with the Commission within 45 days of the ~~anniversary of the date of the original issuance of the subchapter N bonds of that series~~true up.

~~117. Six months following the closing of any series of subchapter N bonds, the servicer will be required to provide a six-month true-up calculation (the "Six-Month Calculation"). If the Six-Month Calculation projects under-collections of uplift charges, the servicer will implement a true-up adjustment in accordance with the Standard True-Up Procedure for the remainder of the initial Annual True-Up Period.~~

198. The servicer will be required to provide a quarterly ~~or semi-annual interim~~ true-up calculation until the scheduled maturity of the subchapter N bonds, and if that calculation projects under-collections of uplift charges, then the servicer will implement a true-up adjustment in accordance with the standard true-up procedure ~~for the remainder of the Annual True-Up Period~~.

~~118.~~199. A quarterly true up will provide additional certainty in the collection of funds to repay the subchapter N bonds and is the appropriate frequency for true-up clacuclations.

~~119. The servicer is required to provide a quarterly true-up calculation (the "Quarterly Calculation") beginning twelve (12) months prior to the scheduled maturity of the bonds and continuing every three (3) months until maturity. If a Quarterly Calculation projects under-collections of uplift charges, the servicer shall implement a true-up adjustment in accordance with the Standard True-Up Procedure for the remainder of the Annual True-Up Period.~~

~~120.~~200. A fixed amount of uplift charges will be allocated each day to the QSEs representing the interests of obligated LSEs on a load ratio share basis and the collection of uplift charges will not vary significantly because a fixed amount will be collected each day regardless of day-to-day changes in the volume of load. ERCOT recommended the adoption of true-up adjustments based upon cumulative differences, regardless of the reason, between the periodic payment requirement, including scheduled principal and interest payments on the subchapter N bonds, and the amount of uplift-charge remittances to the indenture trustee. Adjustments will consider, among other things, the following:

a. any increases or decreases in the periodic payment requirement, including any unanticipated ongoing costs relating to the administration and maintenance of the subchapter N bonds;

b. any changes to the ERCOT protocols or procedures relating to the forecasting of projected loads, uncollectibles, and delinquencies, including declines in collection from any ERCOT customer class;

c. any changes to the ERCOT protocols relating to its allocation methodology for the collection of uplift charges, to the extent permitted under this Order; and

d. any changes to the ERCOT protocols or procedures relating to the collection of uplift charges from QSEs, to the extent permitted under this Order.

Standard True-up Procedure

~~121.~~201. For each ~~of the~~quarterly true-up calculations~~ described in this Order, the servicer will make true-up adjustments ~~in the following manner, known as~~using the standard true-up procedure as follows:

a. With respect to ~~the upcoming Annual True-Up period described~~each quarterly true up,

1) calculate under-collections or over-collections from the preceding ~~Annual True-Up~~ true-up period by subtracting the previous period's uplift charges revenues collected from the periodic billing requirement determined for the same period;

2) estimate any anticipated under-collections or over-collections for the current or upcoming ~~Annual True-Up~~true-up period~~, taking into account the considerations described in Findings of Fact Paragraph 69 of this Order~~;

3) calculate the periodic billing requirement for the upcoming ~~Annual True-Up~~true-up period, taking into account the total amount of prior and anticipated over-collection and under-collection amounts described in steps (1) and (2) above and calculate the daily amortization amount for the periodic billing requirement; and

4) assess the updated daily amortization amount to each QSE in accordance with the uplift-charges assessment methodology.

b. With respect to any ~~standard~~ interim true-up period,

1) calculate under-collections for the interim period by subtracting the interim period's uplift charges revenues collected from the periodic billing requirement determined for the same period;

2) estimate any anticipated under-collections for the remaining interim period~~, taking into account the considerations described in Findings of Fact Paragraph 67 of this Order~~;

3) calculate the periodic billing requirement for the remaining interim period, taking into account the total amount of prior and anticipated under-collection amounts described in steps (1) and (2) above and calculate the daily amortization amount for the periodic billing requirement; and

4) assess the updated daily amortization amount to each QSE in accordance with the uplift-charges assessment methodology, with the foregoing subject to the procedures described in the final issuance advice letter.

10. Optional and Mandatory Interim True-Up of Uplift Charges

202. In addition to ~~the foregoing regular~~mandatory quarterly true-up adjustments approved in this Order, ERCOT proposed that interim optional true-up adjustments may be made by the servicer more frequently at any time during the term of the subchapter N bonds to correct any projected under-collection, as provided in this Order, to assure timely payment of subchapter N bonds based on rating agency and bondholder considerations.

a. ~~Further,~~ERCOT also proposed that the servicer ~~shall~~ make mandatory interim true-up adjustments on a more frequent basis as needed (a) if the servicer forecasts that the uplift-charge collections will be insufficient to make all scheduled payments of principal, interest, and other amounts in respect of the subchapter N bonds on a timely basis during the current or next succeeding payment period; ~~and/or~~or (b) to replenish any draws upon the capital subaccount.

~~122.~~203. In the event of an optional or optional mandatory interim true-up, the interim true-up adjustment will be filed not less than 15 days prior to the first billing cycle of the month in which the revised daily amortization amount will be in effect.

11. Additional True-Up Provisions

204. The true-up-adjustment filing will contain the servicer's calculation of the true-up adjustment to the uplift charges.

205. The Commission will have 15 days after the date of a true-up-adjustment filing to confirm that the servicer's adjustment complies with PURA and this Order.

206. Any true-up adjustment filed with the Commission will be effective on its proposed effective date, which will be not less than 15 days after filing.

207. Any necessary corrections to the true-up adjustment will be made in future true-up adjustment filings.

~~123.~~208. Any interim true-up may take into account the periodic payment requirement for the next succeeding twelve 12 months if required by the servicing agreement.

~~124.~~209. The mandatory true up, the optional interim true up, and the mandatory interim true up and the true-up procedures contained in this Order are reasonable and appropriate to ensure that the collection of uplift charges arising from the uplift property will be sufficient to timely pay principal and interest on the subchapter N bonds and any other amounts due in connection with the subchapter N bonds, will lower risks associated with the collection of uplift charges, and will result in lower subchapter N bonds charges and to support the financial integrity of the wholesale market and is necessary to protect the public interest.

12. Designated Representative

~~125.~~210. To ensure that the structuring and pricing of the subchapter N bonds result in the lowest uplift charges consistent with market conditions and the terms of this Order, it is necessary and appropriate for the Commission or its designated representative to have a decision-making role co-equal with ERCOT with respect to the structuring and pricing of the subchapter N bonds and that all matters related to the structuring and pricing of the subchapter N bonds shall be determined through a joint decision of ERCOT and the Commission or its designated representative. The Commission's ~~primary goal is to~~participation will ensure that the structuring and pricing of the subchapter N bonds result in a balance between obtaining the lowest uplift charges and expediting the funding of the uplift balance consistent with market conditions and the terms of this Order.

~~126.~~211. It is necessary and appropriate that the Commission or its designated representative have an opportunity to participate fully and in advance in all plans and decisions relating to the structuring, marketing, and pricing of the subchapter N bonds and that it be provided timely information as necessary to allow it to participate in a timely manner, including, but not limited to, information prepared for the benefit of rating agencies and information prepared for use in marketing the subchapter N bonds to investors.

~~127.~~212. It is necessary and appropriate that the Commission or its designated representative ~~may~~ require a certificate from any underwriter~~(s)~~ confirming that the structuring, marketing, and pricing of the subchapter N bonds resulted in the lowest uplift charges consistent with market conditions, the marketing plan, and the terms of this Order.

~~128.~~213. ERCOT expects the following transaction documents to be executed in connection with each series of subchapter N bonds issued under this Order: an administration agreement, indenture, limited-liability-company agreement, uplift-property servicing agreement, and uplift-property purchase and sale agreement. It is necessary and appropriate that ~~The~~ the Commission's designated representative ~~shall~~ be afforded an opportunity to review and comment on these documents before they are finalized, and that the final versions ~~shall be~~are consistent with this Order. It is also necessary and appropriate for the Commission to exercise its oversight responsibilities that the final version of these transaction be filed with the Commission.

13. Lowest Uplift Charges

214. PURA § 39.651(e) states that the Commission ~~to~~ must ensure that the structuring and pricing of ~~financings issued under~~the Subchapter N bonds result in the lowest uplift charges consistent with market conditions and the terms of this Order and that in making this determination any present value calculation must use a discount rate equal to the proposed interest rate on the bonds.

215. The ~~financing achieves the goal of~~debt financing mechanism approved by this Order and achieves the goals established by the Legislature and will help ~~stabilizing~~ stabilize the wholesale electric market~~, which is to be balanced against achieving the lowest uplift charges~~.

216. Financing the uplift balance in this manner approved in this Order will support the financial integrity of the wholesale market and is necessary to protect the public interest, considering the impacts on both wholesale-market participants and retail customers.

217. ~~In making this determination~~When evaluating uplift charges, any present value calculation must use a discount rate equal to the proposed interest rate on the financings.

~~129.~~218. The financing structure approved by this Order, including the securitization of uplift charges and the initial issuance of subchapter N bonds, will result in the lowest uplift charges consistent with market conditions.

~~130.~~219. ERCOT has proposed a transaction structure that is expected to include, but is not limited to,

a. the use of BondCo as issuer of the subchapter N bonds, limiting the risks to subchapter N bonds holders of any adverse impact resulting from a bankruptcy proceeding of its parent or any affiliate;

b. the right to impose and collect uplift charges that are nonbypassable and which must be trued-up at least annually, but may be required to be trued-up more frequently under certain circumstances, to assure the timely payment of the debt service and other ongoing costs;

c. ~~if and to the extent that BondCo,~~ to maintain Bondco's status as a bankruptcy remote entity or to preserve ERCOT's status as an exempt 501(c)(4) organization under applicable federal tax and securities laws with respect to any issuance of subchapter N bonds, then as a condition to such issuance, BondCo will secure the

minimum capital as may be required in accordance with such laws and regulations then in effect;

d. benefits for federal income tax purposes including, (a) the transfer of the rights under this Order to BondCo not resulting in gross income to ERCOT and the future revenues under the uplift charges being included in ERCOT gross income under its usual method of accounting, (b) the issuance of the subchapter N bonds and the transfer of the proceeds of the subchapter N bonds to ERCOT not resulting in gross income to ERCOT, and (c) the subchapter N bonds constituting obligations of ERCOT;

e. other features to meet requirements to obtain debt treatment for federal tax purposes, and also to satisfy the requirements of applicable securities laws and regulations;

f. marketing the subchapter N bonds ~~shall be marketed~~ using proven underwriting and marketing processes, through which market conditions and investors' preferences~~,~~ with regard to the timing of the issuance, the terms and conditions, related maturities, and other aspects of the structuring and pricing shall be determined, evaluated and factored into the structuring and pricing of the subchapter N bonds; and

g. furnishing timely information to the Commission's designated representative to allow the Commission through the issuance advice letter process to ensure that the structuring and pricing of the subchapter N bonds result in the lowest uplift charges consistent with market conditions and the terms of this Order.

~~131.~~220. ERCOT's proposed transaction structure, as modified by this Order, is necessary and appropriate to ensure that the structuring and pricing of the subchapter N bonds will result in the lowest uplift charges consistent with market conditions and this Order ~~and ensures the preservation of the financial integrity of the wholesale market and is necessary to protect the public interest~~.

~~**14. Personal Liability**~~

~~132. The subchapter N bonds authorized to be issued pursuant to this Order and PURA § 39.653 will be a nonrecourse debt secured solely by the Uplift Property created by this Order (including the uplift charges explicitly assessed to repay the subchapter N bonds), and the subchapter N bonds will not create a personal liability for ERCOT.~~

D. Use of Net Proceeds

~~133.~~221. ~~Prior to issuing the initial series of subchapter N bonds, the uplift balance must be determined after the Commission issues the uplift balance Verification Order as described in Findings of Fact Paragraph 11 of this Order.~~ Upon issuing the subchapter N bonds, BondCo will transfer the net proceeds from the sale of the subchapter N bonds to ERCOT to be remitted to QSEs representing one or more load-serving entities for the recovery of qualifying costs~~,~~ as determined ~~by the Commission as required~~ by this Order.

222. Each QSE that receives proceeds from ERCOT for the recovery qualifying costs is obligated to remit such amounts to each load-serving entity whom it represents in the amounts required by this Order.

223. Each load-serving entity that receives proceeds from the subchapter N bonds will be required to use the proceeds solely to fulfill payment obligations directly related to qualifying costs and refunding qualifying costs to retail customers who have paid or otherwise would be obligated to pay such costs.

~~134.~~224. Any load-serving entity that receives any portion of the net proceeds of subchapter N bonds that exceed the entity's actual qualifying costs will be required to immediately notify ERCOT and remit any Excess Receipts back to ERCOT~~.~~ and any such excess receipts received by ERCOT must be credited against the uplift balance to reduce the remaining uplift charges.

~~135. Each of BondCo, ERCOT and the QSEs will be entitled to conclusively rely upon the amounts approved by the Commission for remittance to load-serving entities for the recovery of qualifying costs authorized for remittance under PURA.~~

225. The Commission concludes that the steps for the allocation of net proceeds from the sale of subchapter N bonds for the payment of the uplift balance to QSEs representing the interests of qualifying load-serving entities as described in this Order are reasonable, necessary, and ~~sufficient~~ appropriate to ensure that the net proceeds of the subchapter N bonds will be used solely for the purposes described in Subchapter N.

~~136. uplift chargesOrderuplift chargesuplift chargesuplift chargesuplift chargesload-serving entitiesuplift chargesOrderload-serving entitiesuplift chargesload-serving entitiesload-serving entitiesload-serving entityload-serving entityload-serving entityload-serving entityload-serving entityload-serving entityload-serving entitiesuplift chargesload-serving entitiesload-serving entitiesuplift chargesload-serving entityload-serving entityload-serving entitiesload-serving entitiesload-serving entitiesload-serving entityload-serving entityload-serving entityload-serving entityload-serving entityload-serving entityload-serving entityuplift chargesuplift charges~~

IV. Conclusions of Law

The Commission makes the following conclusions of law.

1. ERCOT is the independent organization as defined in PURA § 39.652(1).
2. ERCOT was required to file an application for a debt obligation order under PURA § 39.653 by July 15, 2021.
3. The Commission has jurisdiction and authority over ERCOT's application for a debt obligation order under PURA § 39.653.
4. The Commission has authority to approve this debt obligation order PURA §§ 39.651–39.664.
5. This debt obligation order contains all of the elements required by PURA §§ 39.651–39.664
6. ~~5.~~ This Order does not relieve or excuse any entity from paying amounts that it may owe to ERCOT.

~~6.~~7. Notice of ERCOT's application was provided in compliance with applicable law, through ERCOT's standard form of communication with load-serving entities.

~~7.~~8. Financing the uplift balance in the manner provided by this Order fulfills the purposes of PURA § 39.651 by (1) allowing 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, alleviating liquidity issues and reducing the risk of additional defaults in the wholesale market, and (2) allowing the Commission to stabilize the wholesale electricity market in the ERCOT power region.

~~8.~~9. The issuance advice letter submission process contemplated in this Order for each series of subchapter N bonds satisfies the requirements of PURA § 39.651(e), prescribing that the Commission shall ensure that the structuring and pricing of the subchapter N bonds results in the lowest uplift charges consistent with market conditions and the terms of this Order.

~~9.~~10. The financing mechanism contemplated in this Order, including the securitization of uplift charges and issuance of subchapter N bonds, satisfies the requirements of PURA § 39.653(a), prescribing that the financing will support the financial integrity of the wholesale market and is necessary to protect the public interest, considering the impacts on both wholesale-market participants and retail customers.

~~10.~~11. This Order adequately details the uplift balance to be recovered and financed as required by PURA § 39.653(b)(1).

~~11.~~12. The financing of upfront costs to be paid from the proceeds of the subchapter N bonds as described in this Order are costs of implementing this Order as described in PURA § 39.652(5).

~~12.~~13. The ongoing costs associated with administering subchapter N bonds as described in this Order are costs of implementing this Order as described in PURA § 39.652(5).~~are necessary and unavoidable costs of financing the subchapter N bonds under PURA, and the payment of ongoing costs from uplift charges is needed to ensure that the necessary costs to service the subchapter N bonds will be covered~~.

~~13.~~14. The period over which uplift charges approved by this Order may be assessed to repay the subchapter N bonds complies with the requirement in PURA § 39.653(b)(2) that the period not exceed 30 years.

~~14.~~15. PURA § 39.653(b)(2) does not preclude the servicer from recovering uplift charges attributable to service rendered during the 30-year period but remaining unpaid at the end of the 30-year period.

~~15.~~16. The processes ~~for the Commission's verification and approval~~approved in this Order for determining the amount of qualifying costs ~~payable~~ attributable to qualifying load-serving entities and for remitting the net proceeds of the subchapter N bonds for the payment of approved qualifying costs in conformance with the agreement and this Order~~,~~ satisfy the requirements of PURA § 39.653(b)(3).

~~16.~~17. This Order ensures that the net proceeds of the subchapter N bonds must be used solely for the purposes of financing qualifying costs as required by PURA § 39.651(d).

~~17.~~18. Amounts that are required to be paid to the servicer as uplift charges under this Order are uplift charges as defined in PURA § 39.652(5).

~~18.~~19. The processes in this Order pertaining to the assessment and collection of uplift charges and pertaining to the true-up of uplift charges satisfy the requirements of PURA § 39.653(c).

~~19.~~20. Any QSE representing one or more load-serving entities is responsible for paying and settling uplift charges with ERCOT on behalf of its load-serving entities.

~~20.~~21. The process established in the agreement and this Order for allowing qualifying load-serving entities to opt-out of the uplift charges satisfies the requirements of PURA § 39.653(d).

22. PURA § 39.653 does not apply to Brazos~~ and Rayburn,~~ and it is not eligible to receive proceeds from the uplift financing and ~~they are~~is deemed to have opted-out under PURA § 39.653(d)~~to the extent required~~.

~~21.~~23. ~~Ordering paragraph 41 of~~The requirement in this Order that any load-serving must return proceeds from the subchapter N bonds in excess of the load-serving entities actual qualifying costs satisfies the requirements of PURA § 39.653(e).

24. The subchapter N bonds authorized to be issued under this Order and PURA § 39.653 are a nonrecourse debt secured solely by the uplift property created by this Order, including the uplift charges explicitly assessed to repay the subchapter N bonds.

~~22.~~25. ~~, and the~~The subchapter N bonds authorized to be issued under this Order and PURA § 39.653 do not create a personal liability for ERCOT.

26. This Order ensures that the imposition and collection of uplift charges authorized in this Order are nonbypassable as required by PURA § 39.656.

~~23.~~27. ~~and authorize~~The authority granted ERCOT in this Order to establish appropriate fees and other amounts for pursuing amounts owed from QSEs and obligated LSEs~~, as prescribed in~~satisfies PURA § 39.656.

~~24.~~28. The mechanisms for the true-up of uplift charges ~~described~~ approved in this Order satisfy the requirements of PURA § 39.657.

~~25.~~29. PURA § 39.662 prescribes that the rights and interests of ERCOT or its successor under this Order, including the right to impose, collect and receive the uplift charges authorized in this Order, are assignable and become uplift property when they are first transferred to BondCo.

~~26.~~30. The rights, interests and property conveyed to BondCo in any purchase and sale agreement or related bill of sale, including the irrevocable right to impose, collect and receive uplift charges and the revenues and collections from uplift charges are uplift property within the meaning of PURA § 39.662.

~~27.~~31. PURA § 39.662(b) prescribes that all uplift property created under this Order constitutea a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of the uplift charges depends on further acts by ERCOT or others that have not yet occurred

~~28.~~32. PURA § 39.662(c) prescribes that all revenues and collections resulting from the uplift charges assessed under this Order constitute proceeds only of the uplift property arising from this Order.

~~29.~~33. Upon the transfer by ERCOT of uplift property to a BondCo, the BondCo will have all of the rights, title and interest of ERCOT with respect to such uplift property including the right to impose, collect and receive the uplift charges authorized by this Order.

~~30.~~34. PURA § 39.658 prescribes that the transactions involving the transfer and ownership of uplift property and the receipt of uplift charges to BondCo as contemplated in this Order are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.

~~31.~~35. The holders of the subchapter N bonds and the indenture trustee are each financing parties within the meaning of PURA § 39.663.

~~32.~~36. BondCo may issue subchapter N bonds in accordance with this Order.

~~33.~~37. The subchapter N bonds issued under this Order are debt obligations within the meaning of PURA § 39.651(a) and the subchapter N bonds and holders thereof are entitled to all of the protections provided under subchapter N of chapter 39 of PURA.

~~34.~~38. If and when ERCOT transfers to a BondCo the right to impose, collect, and receive the uplift charges and to issue the subchapter N bonds, the servicer may recover the uplift charges associated with such uplift property only for the benefit of BondCo and the holders of the subchapter N bonds in accordance with the servicing agreement.

~~35.~~39. As provided by PURA § 39.663, the subchapter N bonds authorized by this Order are not a debt or obligation of the State of Texas and are not a charge on its full faith and credit or taxing power.

~~36.~~40. ~~By adopting this Order Each of the State~~Through PURA § 39.663, the state of Texas ~~and the Commission~~ has ~~lawfully~~ pledged for the benefit and protection of all financing parties and ERCOT, that it shall not take or permit any action that would impair the value of uplift property, or reduce, alter, or impair the uplift charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges

incurred and contracts to be performed in connection with the related subchapter N bonds have been paid and performed in full.

~~37.~~41. PURA § 39.663 authorizes BondCo, in issuing subchapter N bonds, to include the state's pledge in any documentation relating to the subchapter N bonds.

~~38.~~42. This Order remains in full force and effect and unabated notwithstanding the bankruptcy of ERCOT, its successors, or assignees.

~~39.~~43. This Order is an order approving ERCOT's application for a debt obligation order under PURA § 39.653, and is irrevocable and not subject to reduction, impairment or adjustment by further action of Commission, as prescribed by PURA §39.653(f), and the finality of this Order is not impaired in any manner by the participation of the Commission through its designated representative in any decisions related to issuance of the subchapter N bonds or by the Commission's review of or issuance of an order related to the issuance advice letter required to be filed with the Commission by this Order.

~~40.~~44. The uplift charges authorized in this Order are irrevocable and not subject to reduction, impairment, or adjustment by further action of the Commission, as prescribed by PURA §39.653(f).

~~41.~~45. This Order is a debt obligation order under PURA § 39.653 and under subsection (g) is not subject to rehearing by the Commission.

~~42.~~46. This Order is not subject to review or appeal except as expressly permitted under PURA § 39.653(g).

~~43.~~47. Any review of this Order on appeal is limited solely to the record before the Commission and briefs to the court and is limited to whether this Order conforms to the constitution and laws of this State and the United States and is within the authority of the Commission under PURA.

~~44.~~48. This Order meets the requirements for a debt obligation order under Subchapter N of Chapter 39 of PURA.

49. PURA § 39.659 prescribes that, effective on the date the first subchapter N bonds are issued under this Order, if any provision in PURA is held to be invalid or is invalidated,

superseded, replaced, repealed, or expires for any reason, that occurrence will not affect the validity or continuation of Subchapter N or any other provision of PURA that is relevant to the issuance, administration, payment, retirement, or refunding of the subchapter N bonds or to any actions of ERCOT, its successors, an assignee, a collection agent, or a financing party, which shall remain in full force and effect.

50. An electric cooperative, including an electric cooperative that elects to receive offsets, does not become subject to rate regulation by the Commission and receipt of offsets does not affect the applicability of PURA Chapter 41 to an electric cooperative.

51. The electric cooperatives identified in attachment B are eligible to opt out of receiving securitization proceeds and being assessed uplift charges.

52. The municipally owned utilities identified in attachment B to the agreement are eligible to opt out of receiving securitization proceeds and being assessed uplift charges.

53. Texas Retail Electric, LLC, identified in attachment B to the agreement, is eligible to opt out of receiving securitization proceeds and being assessed uplift charges.

~~45.~~54. The methodology for distributing subchapter N bond proceeds in attachment C of the agreement meet the requirements and objective of Subchapter N.

~~46.~~55. Entities described in attachment C to the agreement as ineligible to receive proceeds from the subchapter N bonds are not liable to pay uplift charges.

V. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders~~:~~.

A. Approval

Approval of Application.

1. The application of ERCOT for the issuance of a debt obligation order under PURA § 39.653, as modified by the agreement and this Order, is approved~~, as amended by this Debt Obligation Order~~Order~~.

Uplift Balance.

2. The uplift balance in the amount of up to $2.1 billion, to be calculated as provided in this Order, is hereby approved.

Uplift Charges.

3. The assessment and collection of uplift charges to QSEs representing the interests of obligated LSEs on a load ratio share basis as provided for in this Order is hereby approved in an amount sufficient to ensure the expected recovery of amounts necessary to timely provide all payments of debt service and other required amounts and charges in connection with the subchapter N bonds, as provided in this Order. The initial billing of uplift charges is to commence no sooner than the first month following the initial issuance of subchapter N bonds.

Subchapter N Bonds.

4. ERCOT is authorized in accordance with this Order to issue subchapter N bonds in one or more series, in an aggregate principal amount not to exceed the securitizable amount.

~~4.~~5. This Order constitutes Commission approval, if necessary, under PURA § 39.151(d-2) for ERCOT to obtain debt financing.

Authority to Securitize.

~~5.~~6. ERCOT is authorized in accordance with this Order to securitize uplift charges corresponding to the securitizable amount, to cause the issuance of subchapter N bonds in an aggregate amount not to exceed the securitizable amount and create uplift property to be pledged and assigned by ERCOT as collateral and a source of repayment for the subchapter N bonds.

Provision of Information.

~~6.~~7. ERCOT shall take all necessary steps to ensure that the Commission or its designated representative is provided sufficient and timely information to allow the Commission or its designated representative to fully participate in and exercise its decision-making authority over the proposed financing as provided in this Order.

Issuance Advice Letter.

~~7.~~8. For each series of subchapter N bonds issued, ERCOT must submit a draft issuance advice letter to Commission Staff for review not later than two weeks prior to the expected date of commencement of marketing the subchapter N bonds.

~~8.~~9. Unless Commission Staff elected to act sooner, within one week after receipt of the draft issuance advice letter, Commission staff shall provide ERCOT comments and recommendations regarding the adequacy of the information provided.

~~9.~~10. Not later than the end of the first business day after the pricing of the subchapter N bonds and prior to the issuance of the subchapter N bonds, ERCOT, in consultation with the Commission acting through its designated representative, must file with the Commission an issuance advice letter in substantially the form of the issuance advice letter attached as attachment A to this Order.

~~10.~~11. As part of the issuance advice letter, ERCOT, through an officer of ERCOT, must provide a certification worded identically to the statement in the form of issuance advice letter attached hereto as attachment A.

~~11.~~12. The issuance advice letter must be completed, evidencing the actual dollar amount of the uplift charges and other information specific to the subchapter N bonds to be issued, and must certify to the Commission that the structure and pricing of that series results in the lowest uplift charges consistent with market conditions at the time that the subchapter N bonds are priced and with the terms set out in this Order.

~~12.~~13. If original issue discount, additional credit enhancements, or arrangements to enhance marketability are used, the issuance advice letter must include certification that the original issue discount, additional credit enhancements, or other arrangements are reasonably expected to provide benefits as required by this Order.

~~13.~~14. All amounts which require computation must be computed using the mathematical formulas contained in the form of the issuance advice letter in attachment A to this Order.

~~14.~~15. Electronic spreadsheets with the formulas supporting the schedules contained in the issuance advice letter must be included with the issuance advice letter.

~~15.~~16. The Commission must review and determine whether the issuance advice letter is in compliance with PURA, this Order, and the specific requirements that are contained in the issuance advice letter.

~~16.~~17. The initial uplift charges and the final terms of the subchapter N bonds set forth in the issuance advice letter must become effective on the date of issuance of the subchapter N bonds, which must not occur prior to the fifth business day after pricing, unless prior to noon on the fourth business day after pricing the Commission issues an order finding that the proposed issuance does not comply with the requirements of PURA and this Order.

B. Uplift Charges

Imposition and Collection.

18. ERCOT is authorized to impose uplift charges on, and the servicer is authorized to assess and collect uplift charges from, all QSEs representing the interests of obligated LSEs~~, which includes load-serving entities who enter the market after a Order has been issued, but excludes load-serving entities that opt-out in accordance with the Commission's one-time opt-out process, as approved~~defined in this Order~~,~~ and in accordance with the procedures described in this Order.

~~17.~~19. ERCOT must develop and adopt new Protocol provisions governing the assessment and collection of uplift charges, consistent with this debt obligation order.

~~One-Time~~ Opt Out Procedure~~—Cooperatives~~.

20. Each electric cooperative that intervened in this docket and its member cooperatives that opted out of the uplift charges under the agreement must not receive any of the subchapter N bond proceeds and is not required to take any further action to opt out.

Opt Out Procedure—Municipally Owned Utilities.

21. Each municipally owned utility that intervened in this docket that opted out of the uplift charges under the agreement must not receive any of the subchapter N bond proceeds and is not required to take any further action to opt out.

Opt Out Procedure—Other LSEs.

22. Texas Retail Energy, LLC, which opted out of the uplift charges under the agreement, must not receive any of the subchapter N bond proceeds and is not required to take any further action to opt out.

Opt Out Procedure—Transmission Level Customers.

23. Each REP that is serving eligible transmission-level customers must provide notice to each such customer using the form attached as exhibit MC-S-2 to the testimony of Michael Carter within 15 calendar days of the date this Order is signed. The notice must also include a copy of the notice form attached as exhibit MC-S-3 to the testimony of Michael Carter and each transmission-level customer that elects to opt out must file that form (MC-S-3) in Docket No. 52364 within 45 calendar days of the date this Order is signed.

Opt Out Procedure—Other Load Serving Entities.

24. The City of Georgetown and all load-serving entities eligible to opt out that are not parties to this docket electing to opt out shall file in Docket No. 52364 the ~~documentation required to opt out as described in Findings of Fact Paragraphs 11 and 12 of this~~ Order~~. [INSERT PROCESS ORDERING LANGUAGE]~~information specified in paragraph 7 of the agreement.

25. ~~Brazos Electric Coperative and Rayburn County Electric Cooperative are hereby deemed to have opted out in accordance with finding of fact 113.~~

Opt Out Procedure—Effect.

26. Any load-serving entity or other entity that under the agreement has opted out or is ineligible to receive subchapter N bond proceeds and any load-serving entity that opts out by ~~complies~~ complying with the Commission's opt out process specified in this Order ~~shall be exempt from the payment of~~must not be assessed any uplift charges and must not receive any subchapter N bond proceeds.

Uplift Charges—Entities Not Assessed.

27. Any load-serving entity that under the agreement has opted out of uplift charges, any entity that under the agreement is ineligible to receive proceeds from the subchapter N bonds, any load-serving entity that opts out of uplift charges in Docket No. 52364, the City of

Lubbock, and any entity that meets the requirements of PURA 39.159 must not be assessed uplift charges.

Uplift Charge Remittance Procedures.

~~18.~~28. Uplift charges shall be billed to and collected from QSEs representing one or more obligated LSEs in accordance with ERCOT's existing protocols and the protocol provisions to be created consistent with this Order.

Collector of Uplift Charges.

~~19.~~29. ~~ERCOT or any subsequent~~The servicer of the subchapter N bonds must bill QSEs or any other entity, which, under the terms of this Order, are required to remit uplift charges, for the uplift charges attributable to obligated LSEs they represent.

Collection Period.

~~20.~~30. The uplift charges related to a series of subchapter N bonds must be designed to be assessed over the scheduled life of the subchapter N bonds, which may not exceed 30 years from the date of issuance of the first series of subchapter N bonds. However, amounts remaining unpaid after this 30-year period may be recovered but only to the extent that the charges are attributable to uplift charges allocable to the 30-year period.

Allocation.

~~21.~~31. ERCOT must allocate the uplift charges to each QSE that represents one or more obligated LSEs as described in this Order.

Nonbypassability.

~~22.~~32. The imposition and collection of all uplift charges authorized in this Order must be nonbypassable to all QSEs representing the interests of obligated LSEs within the ERCOT power region. All QSEs must remit, consistent with this Order, the uplift charges collected from its obligated LSEs. All QSEs must pay uplift charges on behalf of its obligated LSEs whose interests they represent.

Rights and Remedies.

~~23.~~33. ~~ERCOT, or any successor servicer,~~The servicer is authorized to exercise all of the rights, remedies, and other methods for pursuing collection of uplift charges from QSEs and obligated LSEs. ERCOT, or any subsequent holder of the uplift property, must exercise

any such remedies and take any action in accordance with PURA, Commission Rules, a Commission Order, or the ERCOT protocols then in effect.

True-Ups.

~~24.~~34. True ups of the uplift charges must be undertaken and conducted in accordance with the mechanisms described in this Order on a quarterly basis. If subchapter N bonds are issued in more than one series, then each series must be subject to separate true-up adjustments in accordance with PURA and this Order, provided, however, that more than one series may be trued-up in a single proceeding.

~~25. **Transfer and Assignment of Uplift Property.** Upon the transfer by ERCOT of the uplift property to a BondCo, BondCo shall have all of the rights, title and interest of ERCOT with respect to such uplift property, including, without limitation, the right to exercise any rights and remedies with respect thereto. If subchapter N bonds are issued in more than one series, then the uplift property transferred as a result of each issuance shall be only those rights associated with that portion of the total amount authorized to be securitized pursuant to this Order which is securitized by such issuance. The rights to impose, collect, and receive uplift charges along with the other rights arising pursuant to this Order as they relate to any portion to the total amount to be securitized that remains unsecuritized shall remain with ERCOT and shall not become uplift property until transferred to a BondCo in connection with a subsequent issuance of subchapter N bonds. A servicer of subchapter N bonds shall have the remedies adopted by this Order.~~

C. Subchapter N Bonds

Issuance.

~~26.~~35. ERCOT is authorized through one or more BondCos to issue one or more series of subchapter N bonds in an aggregate principal amount not to exceed the securitizable amount, as specified in this Order. The subchapter N bonds must be denominated in United States dollars.

Upfront Costs.

~~27.~~36. ERCOT is authorized, as part of the securitizable amount, to finance and pay for ~~its~~ upfront costs from the proceeds of the subchapter N bonds in accordance with the terms of this Order. ~~No individual cap shall apply to any component of the upfront costs.~~

Ongoing Costs.

~~28.~~37. ERCOT ~~may~~ must recover its actual ongoing costs through uplift charges in accordance with the terms of this Order.

Refinancing.

38. ERCOT is authorized to refinance a portion or all of any prior series of subchapter N bonds. ~~This Order constitutes Commission approval to refinance under PURA § 39.151(d-2).~~ Any such refinancing bonds may be offered for sale in public or private markets consistent with market conditions that will result in the lowest uplift charges consistent with then market conditions.

~~29.~~39. ERCOT ~~will~~ is not ~~be~~ required to apply for a subsequent order for any refinancing of subchapter N bonds; however, the authority and approval granted in this Order is effective as to any such refinancing ~~upon, but~~ only upon~~,~~ ERCOT filing with the Commission a separate issuance advice letter for that issuance demonstrating compliance of that issuance with the provisions of this Order.

40. **Collateral.** All uplift property must be held and administered by the indenture trustee pursuant to the indenture as described in ERCOT's application. BondCo must establish a collection account with the indenture trustee as described in this Order.

41. Upon payment of the principal amount of all subchapter N bonds authorized in this Order and the discharge of all obligations in respect thereof all amounts in the collection account, including investment earnings, other than amounts in the capital subaccount, must be released by the indenture trustee to BondCo for distribution in accordance with this Order.

~~30.~~42. ERCOT must, through a filing, notify the Commission within 30 days after the date that these funds are eligible to be released of the amount of such funds available for crediting to the benefit of wholesale-market participants.

Distribution Following Repayment.

43. Following repayment of the subchapter N bonds authorized in this Order and release of the funds held by the indenture trustee, the servicer, on behalf of BondCo, must distribute to ERCOT, the final balance of the general, excess funds, and all other subaccounts other than amounts that were in the capital subaccount, whether such balance is attributable to principal amounts deposited in such subaccounts or to interest thereon, remaining after all other uplift balance have been paid.

44. The amounts must be distributed to the QSEs representing each Obligated LSE that paid uplift charges during the last 12 months that the uplift charges were in effect.

45. BondCo or its successor in interest to the uplift property must, to the extent the capital subaccount is not depleted below its original amount, also distribute to QSEs representing the interests of obligated LSEs any subsequently collected uplift charges.

~~31.~~46. The amount paid to each wholesale-market participant must be determined by multiplying the total amount available for distribution by a fraction, the numerator of which is the total uplift charges paid by the wholesale-market participant during the last 12 months uplift charges were in effect and the denominator of which is the total uplift charges paid by all QSEs representing the interests of obligated LSEs during the last 12 months the uplift charges were in effect.

Funding of Capital Subaccount.

47. The capital contribution by ERCOT to be deposited into the capital subaccount must, with respect to each BondCo and series of subchapter N bonds, be funded by ERCOT and not from the proceeds of the sale of subchapter N bonds. Such capital may be contributed at the issuance of each series of subchapter N bonds or, consistent with applicable tax and securities laws and regulations, periodically during the term of each series of subchapter N bonds.

48. Upon payment of the principal amount of all subchapter N bonds and the discharge of all obligations in respect thereof, all amounts in the capital subaccount, including investment earnings, must be released to BondCo for payment to ERCOT.

~~32.~~49. Investment earnings in this subaccount and authorized return on capital contributions in excess of 0.50%, or such greater amount of capital as is required by applicable tax and securities laws and regulations, of the original principal amount of the subchapter N bonds, if any, may be released earlier in accordance with the indenture.

Original Issue Discount; Credit Enhancement.

50. ERCOT may provide original issue discount or provide for various forms of credit enhancement, including letters of credit, an over-collateralization subaccount or other reserve accounts, surety bonds, and other mechanisms designed to promote the credit quality or marketability of the subchapter N bonds to the extent not prohibited by this Order.

51. Except for the collection account or its subaccounts, ~~T~~the decision to use such arrangements to enhance credit or promote marketability must be made in conjunction with the Commission acting through its designated representative.

52. ERCOT may not enter into an interest rate swap, currency hedge, or interest rate hedging arrangement.

53. ERCOT may include the costs of original issue discount, credit enhancements or other arrangements to promote credit quality or marketability as upfront costs or ongoing costs (as appropriate) only if ERCOT certifies that such arrangements are reasonably expected to provide benefits greater than their cost and such certifications are agreed with by the Commission designated representative.

54. ERCOT must not be required to enter any arrangements to promote credit quality or marketability unless all related costs and liabilities can be included in as upfront costs or ongoing costs ~~(as appropriate)~~.

~~33.~~55. ERCOT and the Commission designated representative must evaluate the relative benefits of the arrangements in the same way that benefits are quantified under the quantifiable benefits test. ~~This ordering paragraph does not apply to the collection account or its subaccounts approved in this Order.~~

Life of Bonds.

~~34.~~56. The legal final maturity of the subchapter N bonds authorized by this Order must not exceed 30 years.

Amortization Schedule.

~~35.~~57. The Commission approves, and the subchapter N bonds must be structured to provide, uplift charges that are designed to produce substantially level annual debt service over the expected life of the subchapter N bonds and utilize consistent allocation factors, subject to modification in accordance with the true-up mechanisms adopted in this Order.

Commission Participation in Bond Issuance.

58. The Commission, acting through its designated representative, may participate directly with ERCOT in negotiations regarding the structuring, pricing, and marketing, and must have equal rights with ERCOT to approve or disapprove the proposed structuring, pricing, and marketing of the subchapter N bonds.

59. The Commission's designated representative must have the right to participate fully and in advance regarding all aspects of the structuring, pricing, and marketing of the subchapter N bonds, and all parties must be notified of the designated representative's role and must be provided timely information that is necessary to fulfill its obligation to the Commission.

60. The Commission directs its designated representative to advise the Commission of any proposal that does not comply in any material respect with the criteria established in this Order and to promptly inform ERCOT and the Commission of any items that, in the designated representative's opinion, are not reasonable.

61. ~~Although~~ Nothing in this Order ~~is written in the context of an underwritten offering, nothing herein shall be construed to~~ precludes issuance of the subchapter N bonds through a competitive bid offering or private placement if ERCOT and the Commission's designated representative agree that ERCOT should do so.

~~36.~~62. The Commission's designated representative must notify ERCOT and the Commission no later than 12:00 p.m. on the business day after the Commission's receipt of the issuance advice letter for each series of subchapter N bonds whether the structuring, marketing, and

pricing of that series of subchapter N bonds comply with the criteria established in this Order.

Use of BondCo.

63. ERCOT must use BondCo, a special purpose entity as proposed in its application, in conjunction with the issuance of a series of subchapter N bonds authorized under this Order.

64. BondCo must be funded with an amount of capital that is sufficient for BondCo to carry out its intended functions and to avoid the possibility that ERCOT would have to extend funds to BondCo in a manner that could jeopardize the bankruptcy remoteness of BondCo.

~~37.~~65. ERCOT may create more than one BondCo in which event, the rights, structure, and restrictions described in this Order with respect to BondCo would be applicable to each purchaser of uplift property to the extent of the uplift property sold to it and the subchapter N bonds issued by it.

~~38. **Pledge of the State.** Each of the State of Texas and the Commission pledges for the benefit and protection of all financing parties and ERCOT, that it shall not take or permit any action that would impair the value of uplift property, or reduce, alter, or impair the uplift charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related subchapter N bonds have been paid and performed in full. A BondCo, in issuing subchapter N bonds, is authorized pursuant to PURA § 39.663 and this Order to include this pledge in any documentation relating to the subchapter N bonds.~~

~~39. **Limitation on ERCOT's Liability.** The subchapter N bonds authorized to be issued under this Order and PURA § 39.653 are a nonrecourse debt to ERCOT, secured solely by the uplift property created by this Order (including the uplift charges explicitly assessed to repay the subchapter N bonds), and the subchapter N bonds shall not create a personal liability for ERCOT.~~

D. Servicing

Servicing Agreement.

66. The Commission authorizes ERCOT to enter into the servicing agreement with BondCo and to perform the servicing duties approved in this Order.

67. ~~Without limiting the foregoing, in~~In its capacity as initial servicer of the uplift property, ERCOT is authorized to calculate, bill and collect for the account of BondCo, the uplift charges initially authorized in this Order, as adjusted from time to time to meet the periodic payment requirements as provided in this Order and to make such filings and take such other actions as are required or permitted by this Order in connection with the true-ups described in this Order.

68. The servicer must collect servicing fees in accordance with the provisions of the servicing agreement, provided that the annual servicing fee payable to ERCOT while it is serving as servicer, or to any other servicer affiliated with ERCOT, must not at any time exceed the amount described in the applicable issuance advice letter.

~~40.~~69. The servicing agreement ~~shall~~ must also include a provision that ERCOT must indemnify the Commission in connection with any increase in servicing fees that become payable as a result of a default resulting from ERCOT's willful misconduct, bad faith, or negligence in performance of its duties or observance of its covenants under the servicing agreement. ~~The indemnity shall be enforced by the Commission but shall not be enforceable by any other market participant.~~

Administration Agreement.

70. The Commission authorizes ERCOT to enter into an administration agreement with each BondCo to provide services relating to the administration of the subchapter N bonds.

~~41.~~71. The fee charged by ERCOT as administrator under that agreement must not exceed the amount described in the applicable issuance advice letter, plus reimbursable third-party costs.

Replacement of ~~ERCOT as~~ Servicer.

72. Upon the occurrence of an event of default under the servicing agreement relating to servicer's performance of its servicing functions with respect to the uplift charges, the

financing parties may seek to replace ERCOT, or any subsequent servicer, as the servicer in accordance with the terms of the servicing agreement.

73. If the servicing fee of the replacement servicer exceeds the amount described in the applicable issuance advice letter, the replacement servicer must not begin providing service until the date the Commission approves the appointment of such replacement servicer or, if the Commission does not act to either approve or disapprove the appointment, the date which is 45 days after notice of appointment of the replacement servicer is provided to the Commission.

42.74. No entity may replace ERCOT as the servicer in any of its servicing functions with respect to the uplift charges and the uplift property authorized by this Order if the replacement would cause any of the then current credit ratings of the subchapter N bonds to be suspended, withdrawn, or downgraded.

Amendment of Agreements.

75. The parties to the servicing agreement, administration agreement, indenture, and uplift property sale or assignment agreement may amend the terms of such agreements; provided, however, that no amendment to any such agreement will result in an increase of the ongoing costs without the approval of the Commission.

76. Any amendment that does not increase the ongoing costs does not require prior Commission authorization to be effective.

43.77. Any amendment to any ~~such~~ agreement that may have the effect of increasing ongoing costs must be provided by BondCo to the Commission along with a statement as to the possible effect of the amendment on the ongoing costs., and- ~~The~~ the amendment must become effective on the later of the date proposed by the parties to the amendment or 31 days after such submission to the Commission, unless the Commission issues an order disapproving the amendment within 30 day after the submission.

44.78. **Collection Terms.** The servicer must remit collections of the uplift charges to BondCo or the indenture trustee for BondCo's account in accordance with the terms of the servicing agreement.

E. Structure of the Securitization

45.79. **Structure.** ERCOT must structure the financing as proposed in ERCOT's application and described in this Order. This structure shall be consistent with findings of fact 2727 through 8080 of this Order.

F. Use of Net ProceedsDocket No. 52364

80. **Verification of Qualifying Costs.** Docket No. 52364 must be used by qualifying load-serving entities that have not opted out under the agreement and transmission-voltage customers to submit appropriate documentation evidencing their exposure to qualifying costs a notice of election to opt out, which must contain the information required by this Order, whereupon the Commission will determine the amount of each load-serving entity's allocation of amounts for the recovery of qualifying costs in an aggregate amount not to exceed the uplift balance.

81. ERCOT must make the calculations required in attachment C to the agreement and file those calculations in Docket No. 52364 in the time specified in this Order.

82. Each load-serving entity must file its verification in Docket No. 52364 in the time specified in this Order.

83. Each load-serving entity must file its proposed change to its resource affiliate status in Docket No. 52364 in the time specified in this Order.

G. Use of Net Proceeds

Remittance of Qualifying Costs.

46.84. The net proceeds from the sale of any subchapter N bonds issued under this Order must be used solely for the purpose of financing qualifying costs. Upon the issuance of subchapter N bonds, BondCo must transfer the net proceeds from the sale of the subchapter N bonds to ERCOT to be remitted to QSEs representing one or more load-serving entities for the recovery of qualifying costs authorized by the Commission pursuant to an uplift balance Verification Order, as provided in findings of fact 8181 and 8282 ofdetermined in accordance with this Order. Each of BondCo, ERCOT and the QSEs shall be entitled to conclusively rely upon the amounts approved by the Commission for remittance to load-serving entities for the recovery of qualifying costs authorized for remittance under PURA.

Adjustments to Customer Invoices.

~~47.~~85. All load-serving entities that receive offsets to specific uplift charges from ERCOT under this Order 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. ~~An electric cooperative, including an electric cooperative that elects to receive offsets, shall not otherwise become subject to rate regulation by the commission and receipt of offsets does not affect the applicability of PURA Chapter 41 to an electric cooperative.~~

Return of Excess Receipts.

~~48.~~86. Each load-serving entity that receives any portion of the net proceeds of the subchapter N bonds must use the net proceeds of subchapter N bonds solely to fulfill payment obligations directly related to qualifying costs and refunding qualifying costs to retail customers who have paid or otherwise would be obligated to pay such costs. Any load-serving entity that receives any portion of the net proceeds of subchapter N bonds that exceeds the entity's actual qualifying costs must immediately notify ERCOT and remit any Excess Receipts back to ERCOT. Any Excess Receipts received by ERCOT or any subsequent servicing entity must be credited against the uplift balance to reduce the remaining uplift charges, apart from the subchapter N bonds.

Legal Actions Involving Pricing or Uplift Action.

~~49.~~87. Any load-serving entity that receives any portion of the net proceeds of the subchapter N bonds pursuant to this Order must return an amount of the proceeds equal to any money received by the load-serving entity due to litigation seeking judicial review of pricing or uplift action taken by the Commission or ERCOT in connection with the Period of Emergency, regardless of whether the load-serving entity was a party to the litigation that resulted in the load-serving entity receiving money.

Enforcement by the Commission.

~~50.~~88. Commission Staff may use any enforcement mechanism established by chapters 15 or 39 of PURA, including revocation of certification by the Commission, against any entity that fails to remit Excess Receipts back to ERCOT or otherwise misappropriates or misuses amounts received from the proceeds of the subchapter N bonds.

H. Miscellaneous Provisions

Continuing Issuance Right.

~~51.~~89. The authority granted ERCOT ~~has the continuing irrevocable right~~in this Order to cause the issuance of subchapter N bonds in one or more series in accordance with this Order for ~~a period commencing with~~commences the date of this Order and ~~extending~~ ends 24 months following the later of (a) the date on which this Order becomes final and no longer subject to any appeal~~; (b) the date on which the uplift balance Verification Order has been issued by the Commission and no longer subject to any appeal;~~ or (~~e~~b) the date on which any other regulatory approvals necessary to issue the subchapter N bonds are obtained and no longer subject to any appeal. If at any time during the effective period of this Order there is a severe disruption in the financial markets of the United States, the effective period is automatically ~~be~~ extended to a date ~~which is not less than~~that is 90 days after the date such disruption ends.

Internal Revenue Service Private Letter or Other Rulings.

~~52.~~90. ERCOT is not required by this Order to obtain a ruling from the IRS; however, if it elects to do so, then upon receipt, ERCOT must promptly deliver to the Commission a copy of each private letter or other ruling issued by the IRS with respect to the proposed transaction, the subchapter N bonds or any other matter related thereto. ERCOT must also include a copy of every such ruling by the IRS it has received as an attachment to each issuance advice letter required to be filed by this Order. ERCOT may cause subchapter N bonds to be issued without a private letter ruling from the IRA only if it obtains an opinion of tax counsel sufficient to support the issuance of the bonds.

Binding on Successors.

~~53.~~91. ~~This Order, together with the uplift charges authorized in it, shall be binding on ERCOT and any successor to ERCOT.~~ ~~This Order is also binding on~~and any other entity responsible for billing and collecting uplift charges on behalf of BondCo, ~~and any successor to the Commission~~must comply with this Order. In this paragraph, a successor means any entity that succeeds by any means whatsoever to any interest or obligation of its predecessor or transferor, including by way of bankruptcy, reorganization or other insolvency proceeding, merger, division, consolidation, conversion, assignment, sale,

transfer, lease, management contract, pledge or other security, by operation of law or otherwise.

Flexibility.

~~54.~~92. Subject to compliance with the requirements of this Order, ERCOT and BondCo must be afforded flexibility in establishing the terms and conditions of the subchapter N bonds, including the final structure of BondCo, repayment schedules, term, payment dates, collateral, credit enhancement, required debt service, reserves, interest rates, use of original issue discount, hedges, indices and other financing costs and the ability of ERCOT, at its option, to cause one or more series of subchapter N bonds to be issued or to create more than one BondCo for purposes of issuing such subchapter N bonds.

Effectiveness of Order.

~~55.~~93. This Order is effective upon issuance and is not subject to rehearing by the Commission. Notwithstanding the foregoing, no uplift property is created hereunder, and ERCOT is not authorized to impose, collect, and receive uplift charges, until ~~concurrently with~~ the transfer of ERCOT's rights hereunder to BondCo in conjunction with the issuance of the subchapter N bonds.

Regulatory Approvals.

~~56.~~94. All regulatory approvals within the jurisdiction of the Commission that are necessary for the financing of the uplift charges associated with the uplift balance that is the subject of the application, and all related transactions contemplated in the application, are granted.

Effect.

~~57.~~95. ~~This Order constitutes a legal Order for ERCOT under Subchapter N. The Commission finds this Order complies with the provisions of Subchapter N. A Order gives rise to rights, interests, obligations and duties as expressed in Subchapter N. It is the Commission's express intent to give rise to those rights, interests, obligations and duties by issuing this Order.~~ ERCOT and the servicer are directed to take all actions as are required to effectuate the transactions approved in this Order, subject to compliance with the criteria established in this Order.

~~96. **Further Commission Action.** The Commission guarantees that it shall act pursuant to this Order as expressly authorized by PURA to ensure that expected Uplift Charge revenues are sufficient to pay on a timely basis scheduled principal and interest on the subchapter N bonds issued pursuant to this Order and other costs, including fees and expenses, in connection with the subchapter N bonds.~~

Additional Items

97. The testimony of Michael Carter and Carrie Biven filed in support of the agreement is admitted into evidence.

98. ERCOT must file a copy of the administrative agreement, indenture, limited liability company agreement, servicing agreement, purchase and sale agreements and any agreement it or Bondco enter into in relation to the debt financing mechanism approved in this Order, including any amendments to such agreements. ERCOT must also file a copy of all true-up calculations and any adjustments made to the uplift charge and any other document that the Commission requests or orders.

~~58.~~99. All filings required by this ordering paragraph must be filed in Project No. XXXXX, *style of project.*

100. To the extent necessary to prevent wholesale market participants from engaging in behavior designed to avoid default charges, including leaving and reentering the market, ERCOT must develop and adopt new Protocol provisions.

~~59.~~101. ~~**All Other Motions, etc., Denied.**~~ The Commission denies all other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief not expressly granted in this Order.

Signed at Austin, Texas the _____ day of October 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

_____

WILL MCADAMS, COMMISSIONER

_____

LORI COBOS, COMMISSIONER

_____

JIMMY GLOTFELTY, COMMISSIONER

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PUC DOCKET NO. 52322

APPLICATION OF ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC. FOR A DEBT OBLIGATION ORDER PURSUANT TO CHAPTER 39, SUBCHAPTER N, OF THE PUBLIC UTILITY REGULATORY ACT	§ § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

DRAFT DEBT OBLIGATION ORDER (CLEAN)

This Order addresses the application of Electric Reliability Council of Texas, Inc. (ERCOT) for a debt obligation order under section 39.653 of the Public Utility Regulatory Act (PURA).[1] In its application, ERCOT seeks Commission approval of a debt financing mechanism to pay for the uplift balance and reasonable costs to implement this Order. ERCOT proposed that bonds be issued through a special purpose entity and the proceeds used to pay the uplift balance and that it be allowed to assess uplift charges to pay for the bonds.

An agreement resolving many issues in this matter was filed after the Commission held a hearing on the merits of the application. All parties that filed testimony signed the agreement and no party opposes the agreement. The parties agreed on issues related to opting out, allocating the uplift balance, and distributing the proceeds of the financing.

As discussed in this Order, the Commission finds that ERCOT's application, as modified by the agreement and this Order, should be approved and that the financing debt financing mechanism approved in this Order meets all applicable requirements of PURA.

In this Order the Commission approves the mechanisms that allow the uplift balance to be determined and the amount of the financing proceeds to be distributed and the documentation and calculations required to determine these amounts. The Commission also approves the mechanisms to calculate and assess uplift charges to repay the uplift balance and other amounts necessary to implement this Order and the financing mechanism established by this Order.

This Order also ensures that uplift charges are nonbypassable and establishes mechanisms to ensure that uplift charges are reviewed and adjusted on a quarterly basis to ensure sufficient

[1] Tex. Util Code §§ 11.001–66.016. (PURA)

amounts of revenue make timely payments of debt service and other required amounts related to the debt obligation.

This Order approves ERCOT's proposal to issue bonds through a special purpose entity to finance the uplift balance providing security of uplift property and the use of credit enhancements to minimize uplift charges.

This Order also approves the securitization of uplift charges and the creation of uplift property.

The Commission also establishes certain criteria in this Order that must be met for the approvals and authorizations granted in this Order to become effective. Further, this Order requires specified documents and othe information be filed with the Commission so that it can ensure compliance with this Order.

This Order does not relieve or excuse any entity from paying amounts that it may owe to ERCOT.

I. DISCUSSION

A. Background

In February 2021, Winter Storm Uri resulted in outages at many of the generation resources within the ERCOT region, and the demand for power exceeded supply for several days during the week of the storm. The inadequate supply of power required that load be involuntarily shed to protect the integrity of the ERCOT grid, and many Texans lost power for extended periods that week. This condition also drove up prices in the wholesale electricity market causing a number of market participants, many of whom represented load-serving entities, to default on their payment obligations under ERCOT protocols. As a result of these payment defaults, ERCOT was unable to collect sufficient funds to fully pay certain wholesale-market participants who were due payments from ERCOT for power they produced during the storm.

To address these problems, the Texas Legislature enacted two bills that authorized financing mechanisms to provide funds to help ERCOT and market participants meet their obligations. One bill added subchapters M and N to chapter 39 of PURA and each provided

authority for a financing mechanism to address different aspects of the financial problem.[2] The other bill added subchapter D to chapter 41 of PURA to provide a financial mechanism for electric cooperatives to address the cooperatives extraordinary costs.[3] The Commission concludes that all of the mechanisms authorized by these two bills must be considered together to have a proper understanding of these mechanisms and the goals of the Legislature in authorizing these mechanisms. The Commission further concludes that the mechanisms authorized by these two bills must be considered together to decide whether the standards set out in PURA §§ 39.651-39.664 (subchapter N of chapter 39) have been met.

The Legislature found that the use of the debt financing mechanism authorized in subchapter N "will enable 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, alleviating liquidity issues and reducing the risk of additional defaults in the wholesale market.[4] The Legislature also found that authorizing financing under subchapter N "serves the public purpose of stabilizing the electricity market in the ERCOT region."[5] The Commission concludes that the debt financing mechanism approved in this Order meets these goals of the Legislature.

Further, to approve the debt financing mechanism addressed in this Order, the Commission must find that the financing will support the financial integrity of the wholesale market and is necessary to protect the public interest, considering the impacts on both wholesale-market participants and retail customers.[6] As discussed in this Order, the mechanism proposed by ERCOT in its application, as modified by the agreement and this Order, meet these standards and provide significant benefits to both wholesale-market participants and retail customers.

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[2] Act of May 30, 2021, 87th Leg., R.S., ch. 908 (HB 4492), §§2-5, 2021 Tex. Gen. Laws ___ (codified at PURA §§ 39.601–.609 (subchapter M) and PURA §§ 39.651–.664 (subchapter N)).

[3] Act of May 28, 2021, 87th Leg , R S. §§1-3, 2021 Tex. Gen. Laws ___ (codified at PURA §§ 41.151–.163)

[4] PURA § 39.651(b)

[5] PURA § 39 651(c)

[6] PURA § 39.653(a)

B. Subchapter N

The financial mechanisms authorized in subchapter N that are meant to address two specific types of charges: reliability deployment price adder charges and ancillary services costs in excess of the Commission's system-wide offer cap, but only to the extent that these items were uplifted to load-serving entities on a load-ratio-share basis during a specified period: the period of emergency, which is defined as the period beginning at 12:01 a.m. on February 12, 2021 and ending at 11:59 p.m. on February 20, 2021.[7] These charges uplifted during the period of emergency are referenced as qualifying costs in this Order.

These qualifying costs in an amount not to exceed $2.1 billion make up the uplift balance, which is defined as "an amount of money of not more than $2.1 billion that represents amounts uplifted to load-serving entities on a load ratio share basis due to energy consumption during the period of emergency for [qualifying costs] excluding amounts securitized under subchapter D of chapter 41 [of PURA].[8] The uplift balance does not include amounts that were part of the prevailing settlement point price during the period of emergency.[9] Uplift charges will be assessed to load-serving entities to pay the uplift balance and the reasonable costs incurred by a state agency or ERCOT to implement a debt obligation order issued under subchapter N, including the cost of retiring or refunding existing debt.[10]

The Legislature provided three avenues to address the uplift balance: a debt obligation order under PURA § 39.653, commission-authorized financing under PURA § 39.654, or any other financial mechanism that meets the requirements of subchapter N to accomplish the purposes of that subchapter under PURA § 39.655. However, ERCOT was directed by the Legislature to file an application for a debt obligation order under PURA § 39.653 by July 15, 2021,[11] and it did so.

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[7] PURA § 39.652(3).

[8] PURA § 652(4).

[9] *Id*

[10] PURA § 39.652(5).

[11] Act of May 30, 2021, 87th Leg., R.S., ch. 908 (HB 4492), § 6, 2021 Tex. Gen. Laws ___.

Subchapter N provides several benefits and protections for the financing of the uplift balance. One of these is that transactions involving the transfer and ownership of uplift property and the receipt of uplift charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.[12] Others are discussed immediately below.

1. Uplift property

The rights and interests of ERCOT, or a successor, under a debt obligation order, including the right to impose, collect, and receive uplift charges are only contract rights until they are first transferred or pledged in connection with the issuance of debt obligations. After a transfer or pledge, the rights and interest become uplift property.[13] Uplift property is a present property right for purposes of contracts concerning the sale or pledge of property, even though the imposition and collection of uplift charges depends on further acts of ERCOT, or others, that have not yet occurred.[14] Further, a debt obligation order remains in effect and the uplift property continues to exist for the same period as the pledge of the state described by PURA § 39.663.[15] In addition, all revenues and collections resulting from uplift charges constitute proceeds only of the uplift property arising from the debt obligation order.[16]

2. Pledge of the state

Debt obligations issued under a debt obligation order, including any bonds, are not a debt or obligation of the state of Texas and are not a charge on the state's full faith and credit or taxing power.[17] The state pledges, however, for the benefit and protection of financing parties and ERCOT that it will not take or permit any action that would impair the value of uplift property, or reduce, alter, or impair the uplift charges to be imposed, collected, and remitted to financing parties, until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with the related debt obligations have been paid and performed in

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[12] PURA § 39.658.

[13] PURA § 39.662(a).

[14] PURA § 39.662(a).

[15] PURA § 39.662(b).

[16] PURA § 39.662(c).

[17] PURA § 39.663.

full.[18] Any party issuing a debt obligation under a debt obligation order is authorized to include this pledge in any documentation relating to the obligation.[19]

3. Other authority and requirements

The commission is authorized to use any enforcement mechanism established by chapters 15 or 39 of PURA, including revocation of certification by the commission, against any entity that fails to remit excess receipts from the uplift-balance financing as required by PURA § 39.653(e), or otherwise misappropriates or misuses amounts received from the uplift-balance financing.[20]

In addition, a load-serving entity that receives proceeds from the uplift-balance financing must return an amount of the proceeds equal to any amount of money received by the entity due to litigation seeking judicial review of pricing or uplift actions taken by the Commission or ERCOT in connection with the period of emergency.[21]

C. Debt Obligation Order

This Order addresses the application of ERCOT for a debt financing order under PURA §39.653 to establish a financing mechanism to allow for payment of the uplift balance. As previously mention, to issue a debt financing order, the Commission must find that the proposed financing will support the financial integrity of the wholesale market and is necessary to protect the public interest, after considering the impacts on both load-serving entities and retail customers.[22] The Commission must issue a debt obligation order no later than 90 days after ERCOT files its application for the order.[23]

1. Contents of Order

A debt obligation order must state the uplift balance, state the period over which uplift charges must be assessed, and provide a process for remitting the financing of the uplift balance to load-serving entities who were exposed to the qualifying costs included in the uplift balance

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[18] *Id*

[19] *Id*

[20] PURA § 39.661.

[21] PURA § 39.664

[22] PURA § 39.653(a).

[23] PURA § 39.653(f)

that includes a requirement that the load-serving entities submit documentation of their exposure.[24] The order must also include a requirement that a load-serving entity that receives excess proceeds from the financing—proceeds from the financing that exceed that entity's actual exposure—notify ERCOT and remit the excess receipts.[25]

A debt obligation order must include terms ensuring that the imposition and collection of uplift charges authorized by the order are nonbypassable, except for entities that opt out of uplift charges.[26] However, as discussed below, other entities are exempted from the imposition and collection of uplift charges. In addition, the order must authorize ERCOT to establish appropriate fees and other methods for pursuing amounts owed from entities that exit the wholesale market.[27]

The Commission also recognizes that the Legislature has directed the Commission to require all market participants to fully and promptly pay to ERCOT all amounts owed to ERCOT.[28] And ERCOT is required to report to the Commission if a market participant does not make those payments.[29] Further, The Commission and ERCOT are directed to pursue collections of those amounts owing to ERCOT to reduce the costs that would other wise be borne by other market participants or their customers.[30]

2. Effect of Order

A debt obligation order becomes effective in accordance with its terms and the order, together with the uplift charges authorized in the order, and is irrevocable and not subject to reduction, impairment, or adjustment by further action of the Commission after it takes effect.[31] However, the Commission may refinance any debt obligations created by an order under this subchapter if the Commission determines that the refinancing is in the public interest and otherwise

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[24] PURA § 39.653(b).

[25] PURA § 39.653(e).

[26] PURA § 39 656(1)

[27] PURA § 39.656(2).

[28] PURA § 39.159(a) (as added by Act of May 30,2021, 87th Leg., R.S., ch. 908 (HB 4492), § 4).

[29] *Id* § 39.159(b).

[30] *Id* § 39.159(c).

[31] PURA § 39.653(f).

meets the requirements of this subchapter.[32] In addition, a debt obligation order is not subject to rehearing by the commission and is subject to an expedited judicial review process.[33] Further, A debt obligation is a nonrecourse debt secured solely by the uplift charges explicitly assessed to repay the obligation.[34] The independent organization's obligations authorized under this section do not create personal liability for the independent organization.[35]

3. Uplift Charges

Uplift charges are the amounts assessed to load-serving entities to repay amounts financed under subchapter N to pay the uplift balance and reasonable costs incurred by a state agency—which includes the Commission—or ERCOT to implement a debt obligation order under PURA §§ 39.653, 39.654, or 39.655, including the cost of retiring or refunding existing debt.[36]

Uplift charges must be assessed on all load-serving entities, excluding those that opt out of uplift charges, on a load-ratio-share basis, which may be assessed on a kilowatt-hour charge.[37] Uplift charges must also be assessed on load serving entities that enter the market after a debt obligation order is issued.[38] The imposition and collection of uplift charges authorized in a debt obligation order are nonbypassable except for entities that opt out of uplift charges.[39] Further, a debt obligation order must require that uplift charges are reviewed and adjusted at least annually, beginning not later than 45 days after the anniversary date of the issuance of a debt obligation.[40] The true-up mechanism must correct over- and under-collections of uplift charges and ensure the recovery of amounts sufficient to timely pay for the debt service and other required amounts for the debt obligation.[41]

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[32] *Id*

[33] PURA § 39.653(g)

[34] PURA § 39.653(h).

[35] *Id*

[36] PURA § 39.652(5).

[37] PURA § 39.653(c).

[38] *Id.*

[39] PURA § 39.656(a).

[40] PURA § 39 657(1).

[41] PURA § 39.657(2).

Other law provides that certain market participants are excepted from the requirement to pay uplift charges. These include a market participant that otherwise would be subject to an uplift charge solely as a result of acting as a central counterparty clearinghouse in wholesale-market transactions in the ERCOT power region and is regulated as a derivatives clearing organization, as defined by the Commodity Exchange Act (7 U.S.C. Section 1a).[42] Further, ERCOT may not reduce payments to or uplift short-paid amounts to a municipally owned utility that becomes subject to the jurisdiction of that independent system operator on or after May 29, 2021 and before December 30, 2021 related to a default on a payment obligation by a market participant that occurred before May 29, 2021.[43]

4. Opt-out process

The Commission is required to develop a one-time process that allows 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 to opt out of the uplift charges by paying in full all invoices owed for usage during the period of emergency.[44] Load-serving entities and transmission-voltage customers that opt out under this subsection must not receive any proceeds from the uplift financing.

While the opt-out process is not required to be established in a debt obligation order, the Commission concluded that it was necessary to establish that process here to allow the most timely and effective process for financing the uplift balance.

II. DESCRIPTION OF PROPOSED TRANSACTIONS

A description of the transactions proposed by ERCOT is contained in its application and the filing package submitted as part of the application. A brief summary of the proposed transaction is provided in this section. A more detailed description is included in the finding of fact in this Order.

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[42] PURA § 39.159 (as added by Act of May 28, 2021, 87th Leg., R.S., ch. 950 (SB 1580), § 3).

[43] PURA § 39 151(j-1).

[44] PURA § 39.653(d).

To facilitate the proposed financing, ERCOT proposed that one or more special purpose funding entities (BondCo) be created and to whom ERCOT will transfer the rights to impose, collect, and receive uplift charges along with the other rights arising under to this Order. Upon transfer, these rights will become uplift property. BondCo will issue subchapter N bonds and will transfer the net proceeds from the sale of the subchapter N bonds to ERCOT in consideration for the transfer of the uplift property. If ERCOT determines it to be necessary to achieve the lowest overall uplift charges consistent with market conditions and the terms of this Order, ERCOT may cause BondCo to be organized and managed in a manner designed to maintain BondCo as a bankruptcy-remote entity that would not be affected by the bankruptcy of ERCOT, or any other affiliates of ERCOT, or any of their respective successors. ERCOT may also cause BondCo to have at least one independent manager whose approval will be required for certain major actions or organizational changes by BondCo. ERCOT may organize BondCo so that it may issue more than one series of debt under conditions specified in the BondCo organizational documents.

The subchapter N bonds will be issued in accordance with an indenture and administered by an indenture trustee. The subchapter N bonds will be secured by and payable solely out of the uplift property created under this Order and other collateral described in ERCOT's application. That collateral will be pledged to the indenture trustee for the benefit of the holders of the subchapter N bonds and to secure payment of the uplift balance.

The servicer of the subchapter N bonds will collect the uplift charges and remit those amounts to the indenture Trustee on behalf of BondCo. The servicer will be responsible for making any required or allowed true ups of the uplift charges. If the servicer defaults on its obligations under the servicing agreement, the indenture trustee may appoint a successor servicer. ERCOT will act as the initial servicer for the subchapter N bonds.

Uplift charges will be calculated to ensure the collection of an amount sufficient to service the principal, interest, and related charges for the subchapter N bonds incurred to implement this Order. Uplift charges will be allocated among qualified scheduling entities representing load-serving entities on a load ratio share basis, including load-serving entities who enter the market after a Order has been issued, but excluding the load-serving entities that opt-out in accordance with this Order. The uplift charges will be calculated, assessed and charged in the manner described in this Order. In addition to the proposed annual true-up required by PURA § 39.657,

ERCOT proposed interim true-ups as may be required and performed as necessary to ensure that the amount collected from uplift charges is sufficient to service the subchapter N bonds. This Commission, however, modifies the proposed true-up mechanism in this Order. The methodology for making true-ups and allocation adjustments and the circumstances under which each will be made are described in more detail in the findings of fact in this Order.

ERCOT's proposed structure for the uplift charges is designed to provide substantially level annual debt-service and revenue requirements over the life of the bond issue, which will not exceed 30 years.

ERCOT seeks authority to pay out of the proceeds of the subchapter N bonds, the reasonable implementation costs incurred to implement this Order, including upfront costs associated with the issuance of the subchapter N bonds in accordance with this Order. As proposed, upfront costs may include (a) the cost of original issue discount, credit enhancements and other arrangements to enhance marketability, (b) the cost of ERCOT's financial advisor, (c) SEC registration fees, underwriters' fees, rating agency fees, attorneys' fees, (d) any costs incurred by ERCOT, including costs related to the establishment and maintenance of BondCo, and (e) any costs incurred by ERCOT if this Order is appealed. The draft issuance advice letter will reflect the estimated upfront costs to be paid from the proceeds of the subchapter N bonds. The amount of such upfront costs will be updated in the issuance advice letter to reflect more current information available to ERCOT prior to the issuance of the subchapter N bonds.

BondCo may, through uplift charges, cover the ongoing costs of maintaining and servicing subchapter N bonds as those are a cost to repay amounts financed under Subchapter N as authorized by this Order. The draft issuance advice letter will reflect the estimated ongoing costs of servicing and administering each series subchapter N bonds authorized in this Order. The amount of such ongoing costs will be updated in the final issuance advice letter to reflect more current information available to ERCOT prior to the issuance of the subchapter N bonds.

III. Findings of Fact

The Commission makes the following findings of fact.

A. Procedural History

Identification of Applicant and Background

1. ERCOT manages the flow of electric power to more than 26 million Texas customers representing about 90 percent of the state's electric load. As the independent system operator for the region, ERCOT schedules power on an electric grid that connects more than 46,500 miles of transmission lines and more than 710 generation units. It also performs financial settlement for the competitive wholesale bulk-power market and administers retail switching for 8 million premises in competitive choice areas. ERCOT is a membership-based 501(c)(4) nonprofit corporation, governed by a board of directors and subject to oversight by the Commission and the Texas Legislature. Its members include consumers, cooperatives, generators, power marketers, retail electric providers, investor-owned electric utilities, transmission and distribution providers and municipally owned electric utilities.

2. ERCOT acts as the central counterparty for all transactions settled in the ERCOT wholesale market, meaning that ERCOT is the sole seller to each buyer and ERCOT is the sole buyer from each seller. It is essential for ERCOT to maintain revenue neutrality in serving this function. ERCOT generates no profit, but instead acts as a clearinghouse through which funds are exchanged between buyers and sellers in the ERCOT market. In its role as the central counterparty, ERCOT only financially transacts with market participants registered with ERCOT as a QSE or a Congestion Revenue Rights ("CRR") account holder. ERCOT does not transact directly with load-serving entities. A QSE representing one or more load-serving entities is responsible for communicating with ERCOT on behalf of the load-serving entities. Under the ERCOT protocols, the QSE is also responsible for settling payments and charges with ERCOT on behalf of its load-serving entities.

Application

3. On July 16, 2021, ERCOT filed an application for a debt obligation order pursuant to PURA § 39.653 to approve the uplift balance of up to $2.1 billion, approve the assessment and collection of uplift charges to all load-serving entities (except as

expressly exempted under PURA), and securitize the uplift charges and cause the issuance of subchapter N bonds to finance the uplift balance in a principal amount equal to the securitizable amount. The application includes exhibits, schedules, attachments and testimony.

Notice of Application

4. ERCOT provided notice of its application to load-serving entities through ERCOT's existing communication platforms on July 19, 2021.

5. ERCOT provided proof of notice through a filing on July 19, 2021.

6. In Order No. 2 filed on July 29, 2021, the administrative law judge found that ERCOT's notice was reasonable.

Compliance Proceeding

7. In its application, ERCOT requested that the Commission open a separate compliance proceeding in which load-serving entities may submit appropriate documentation evidencing their exposure to qualifying costs and the Commission would determine the amount of each load-serving entity's allocation of amounts for the recovery of Qualifying Costs,

8. On July 28, 2021, Docket No. 52364[45] was opened as a proceeding in which load-serving entities may document their exposure to qualifying costs and submit their election to opt out.

9. The Commission, by Order Severing Issues dated August 19, 2021, determined that Docket No. 52364, will be used as a repository for documentation both of exposure to costs included in the uplift balance and of opt-outs under PURA § 39.653(d) and verification of amounts in that documentation and severed those matters out of this docket and into Docket No. 52364.

10. The Commission also decided that it would address in this docket the process for determining exposure to costs included in the uplift balance, including the

[45] *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*, Docket No. 52364 (pending).

documentation required; the process for opting out of uplift charges under PURA § 39.653(d), including the documentation required; and the process for allocating subchapter N bond proceeds if the amount of the total uplift exposure exceeds the statutory cap of $2.1 billion for the uplift balance.

Intervenors

11. The following parties requested and were granted intervention: AEP Energy Partners; Ambit Texas, LLC; AP Gas & Electric (TX), LLC d/b/a APG&E; Avangrid Renewables, LLC; BP Energy Company; Calpine Corporation; Citigroup Energy Inc.; City of Austin d/b/a Austin Energy; City of Denton; City of Garland; City of Georgetown; City of Lubbock; City of Seguin; Coalition of Competitive Retail Electric Providers; DC Energy Texas, LC; East Texas Electric Cooperative, Inc.; EDF Energy Services, LLC; Energy Trading Institute; Engie Resources LLC and Engie Energy Marketing NA, Inc.; ERCOT; Exelon Generation Company, LLC; Fulcrum Energy d/b/a Amigo Energy, Tara Energy, and Hudson Energy Services, LLC; Gexa Energy LP; Golden Spread Electric Cooperative, Inc.; Just Energy Texas, LP; NRG Energy, Inc.; Lower Colorado River Authority and LCRA WSC Energy; Luminant Energy Company, LLC; Luminant ET Services Company, LLC; Morgan Stanley Capital Group, Inc.; Office of Public Utility Counsel; Rayburn Country Electric Cooperative, Inc.; Shell Energy North America (US), L.P.; South Texas Electric Cooperative; Southern Federal Power LLC; Tenaska Power Services Co., TPS 1, TPS II, TPS III, TPS IV, Tenaska TOPS REP LP, TOPS 1, TOPS 5, TOPS 6, and TOPS 7; Texas Industrial Energy Consumers; Texas Retail Energy LLC; Texpo Power LP; TriEagle Energy LP, TXU Energy Retail Company, LLC; Value Based Brands LLC d/b/a 4Change Energy, Express Energy and Veteran Energy; Vitol Inc.; and 174 Power Global Retail Texas, LLC. Commission Staff also participated in the proceeding.

Testimony

12. The following parties filed testimony in this docket: Calpine Corporation; Coalition of Competitive Retail Electric Providers; Commission Staff; ERCOT; Exelon Generation Company, LLC; Just Energy; NRG Energy, Inc.; Rayburn Country

Electric Cooperative, Inc.; Texas Industrial Energy Consumers; TXU LSEs and Luminant Energy (TXU Energy Retail Company, Ambit Texas, Luminant ET Services Company, Trieagle Energy, Value Based Brands, and Luminant Energy Company).

13. ERCOT filed rebuttal testimony on August 20, 2021.

Hearing

14. The Commission held a hearing on ERCOT's application on August 24-25, 2021.

15. Post-hearing briefs were filed on September 1, 2021 and

16. Reply briefs were filed on September 8, 2021.

17. On September 8, 2021, Brazos Electric Cooperative filed a letter stating that it had filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code and that, because the amounts ERCOT claims are due are within the jurisdiction of the federal bankruptcy court, Brazos should be considered opted out for purposes of this docket and the resulting financing and should not be allocated proceeds from the financing or uplift charges.

18. In Order No. 8 filed on September 24, 2021, the administrative law judge directed that the transcript of the hearing be corrected.

Agreement

19. On September 16, 2021, Commission Staff filed a letter stating that an agreement on certain issues had been reached.

20. On September 20, 2021, a nonunanimous agreement that resolved certain issues between the parties that are signatories to the agreement was filed.

21. The parties that entered into the agreement are listed on attachment A of the agreement (the signatories).

22. ERCOT, the Texas Industrial Energy Consumers, and Rayburn Country electric Cooperative only joined in certain paragraphs of the agreement as detailed in the agreement but do not oppose any portion of the agreement.

23. No party opposes the agreement.

24. The agreement provides that subsequent to the execution of the agreement, supporting testimony would be filed in this docket that would include an agreed form of notice to transmission-voltage customers regarding the opt-out notice, and an agreed form for transmission-voltage customers to opt out, and that the supporting testimony would address agreed deadlines for REPs to provide notice to their transmission-voltage customers regarding the opt-out process and for transmission-voltage customers to file the agreed form to opt out.

25. On September 24, 2021, the testimony of Michael Carter in support of the agreement was filed on behalf of the signatories.

26. On September 28, 2021, the testimony of Carrie Bivens in support of the agreement was filed.

27. On September 28, 2021, the testimony of Kenan Ögelman in support of the agreement was filed.

B. Costs and Amount to be Securitized

1. Uplift balance

28. The agreement provides a comprehensive methodology to calculate the total exposure of each load-serving entity to qualifying costs, adjusted for any transmission level customer of served by that load-serving entity.

29. The uplift balance under the agreed methodology is $2.1 billion.

30. The agreed mythology is appropriate to determine the amount of the uplift balance.

2. Opt out of uplift charges

31. The agreement provides that any load-serving entity or transmission-voltage customer that is eligible to opt out of the uplift charges must declare its status no later than the deadline set by the Commission using the procedures set forth in paragraphs 3-7 of the agreement.