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

COMMISSION STAFF’S RECOMMENDATION ON SUFFICIENCY OF THE APPLICATION AND NOTICE, REQUEST FOR GOOD CAUSE EXCEPTION, AND REQUEST FOR PARALLEL PROCEEDING

On July 16, 2021, The Electric Reliability Council of Texas, Inc. (ERCOT) filed an application for a debt obligation order under PURA¹ chapter 39, subchapter N (Application N). ERCOT included a proposed Debt Obligation Order pursuant to PURA § 39.653(a) as Attachment 4.

On July 20, 2021, the administrative law judge filed Order No. 1, requiring the Staff of the Public Utility Commission of Texas (Staff) to file by July 27, 2021 recommendations regarding the sufficiency of ERCOT's application, the request for a good cause waiver of Nodal Protocol § 1.3.1.1(j), and ERCOT’s method of notice and proof of notice. Separately, Order No. 1 requires Staff to respond to ERCOT’s request to “open a separate docket, to be processed in parallel with this docket, in which load-serving entities subject to subchapter N should be required to make a one-time election regarding whether to opt out of uplift charges, as contemplated under PURA § 39.653(d).” Therefore, this pleading is timely filed.

I. SUFFICIENCY OF APPLICATION

The general requirements for an application filed with the Commission are established in 16 Texas Administrative Code (TAC) § 22.73, which lists eight items an application must contain unless otherwise required by statute or Commission rules. Staff recommends that Application N includes the required information except for the certificate of service required by 16 TAC § 22.73(7). Staff does not recommend that this omission prevents a finding that the application is administratively complete because, at the time of filing, the only other party to this proceeding was

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016.

Staff, and ERCOT did provide the names of the authorized representatives on which service may be made as required by 16 TAC § 22.73(8).²

In addition, PURA § 39.653(a) requires ERCOT to “file an application with the commission to establish a debt financing mechanism for the payment of the uplift balance.” Application N requests that the Commission issue a debt obligation order pursuant to PURA § 39.653(b). Therefore, Staff recommends that Application N be deemed sufficient for this purpose.

II. REQUEST FOR GOOD CAUSE EXCEPTION

Application N requests a good cause exception to ERCOT Nodal Protocol § 1.3.1.1(j) “so that ERCOT can provide information about individual market participants’ settlement and invoice transactions as needed in this proceeding.”³ With respect to transactions associated with the Period of Emergency as defined in PURA § 39.652(3), Staff recommends that there is good cause to grant an exception. These transactions are central to this proceeding in terms of defining *inter alia* the “uplift balance” that must be included in a Debt Obligation Order.⁴ Moreover, even without a good cause waiver, this information is already scheduled to lose its protected status on or about August 19, 2021, which would be well before the anticipated conclusion of this proceeding. This fact, combined with the 90-day timeframe in which the Commission must issue the Debt Obligation Order,⁵ does not justify the burden associated with handling these documents as confidential for the first third of this proceeding.

² Application of Electric Reliability Council of Texas, Inc. for a Debt Obligation Order to Finance Uplift Balances Under PURA Chapter 39, Subchapter N, for an Order Initiating a Parallel Docket, and for a Good-Cause Exception at 005-006 (Jul. 16, 2021) (Application N).

³ *Id.* at 013.

⁴ PURA 39.653(b)(1).

⁵ PURA § 39.653(f).

III. SUFFICIENCY OF NOTICE

Notice in this proceeding is governed by 16 TAC § 22.55, which requires the provision of “reasonable notice to affected persons.”⁶ Staff has reviewed ERCOT’s proof of notice filed on July 19, 2021 and recommends that it is sufficient.⁷

Application N asserts that the “Application and Debt Obligation Order will affect all wholesale market participants.”⁸ ERCOT notified these wholesale market participants via a communication called a “Market Notice.”⁹ Staff understands a Market Notice to describe an email from ERCOT transmitted to designated, publicly-subscribed, email distribution lists.¹⁰ At present, Staff understands the class of persons affected by this proceeding to include Qualified Scheduling Entities (QSE) and Load-Serving Entities (LSE)¹¹ as defined in PURA § 39.652(2). Provided that the authorized representatives for QSEs and LSEs are obligated to subscribe to Market Notices, ERCOT’s method for notifying those affected persons is sufficient.

Staff further recommends that ERCOT’s form of notice is sufficient. The Market Notice included pertinent details like the docket number, intervention deadline, the definition of uplift balance, and a description of the market participants that are statutorily authorized to opt out of paying charges to finance the uplift balance. Staff’s review indicates that the contents of the notice provided reasonable notice of Application N.

IV. REQUEST FOR PARALLEL PROCEEDING

Order No. 1 requires Staff to make recommendations on ERCOT’s request for a separate docket to address the opt out process called for by PURA § 39.653(d). ERCOT asserts that opening

⁶ This is not a proceeding under any of the chapters, subchapters, or sections of PURA referenced in 16 TAC § 22.51 and this is not an electric licensing proceeding, which renders 16 TAC § 22.52 inapplicable.

⁷ Staff notes that proof of notice in Commission proceedings is typically submitted in the form of an affidavit. However, an affidavit is not required by any statute or Commission rule applicable to this proceeding, and Staff does not recommend that a lack of a supporting affidavit render ERCOT’s proof of notice deficient.

⁸ Application N at 006.

⁹ *Id.* at 012 and Attachment 3.

¹⁰ ERCOT Market Notice Email Distribution Lists, http://www.ercot.com/services/comm/mkt_notices/archives/lists (last visited Jul. 26, 2021).

¹¹ Staff does not believe that ERCOT’s proposed method of notice would reach all transmission-voltage customers served by a retail electric provider (REP) because these customers may not necessarily be LSEs. However, this proceeding is specifically relevant to this category of market participants only in respect to the opt out provision set forth in PURA § 39.653(d). Accordingly, Staff will address the notice issue in Section IV of this pleading.

a separate docket to run parallel to this proceeding will allow the Commission to “implement the ‘one-time process’ mandated by PURA § 39.653(d) that allows certain LSEs to opt out” and “to use that proceeding to allow LSEs to submit documentation to demonstrate their eligibility for Uplift Balancing financing proceeds.”¹² Staff recommends that opening a separate docket to address these issues is advisable.

The statutory provisions relevant to ERCOT’s request are PURA § 39.653(d) and § 39.653(b)(3). The former provision directs the Commission to “develop a one-time process” that allows specific categories of market participants “to opt out of the uplift charges by paying in full all invoices owed for usage during the period of emergency.”¹³ The latter provision requires that the debt obligation order issued under PURA § 39.653 must “provide the process for remitting the proceeds of the financing to load-serving entities who were exposed to the costs included in the uplift balance, including a requirement for the load-serving entities to submit documentation of their exposure.”¹⁴

One notable distinction between these two requirements is that the one-time, opt-out process is not an expressly enumerated component of the Debt Obligation Order but the process for documenting exposure is. As such, Staff believes that the process used to document exposure is likely to be one of the contested issues in this proceeding. This is bolstered by the fact that briefing has been requested on questions addressing how to determine the exposure of an LSE that both made and received payments in excess of the system-wide offer cap on a standalone basis or due to payments made by an affiliate.¹⁵ Another issue that Staff has identified¹⁶ as an issue that could be contested is how best to address a situation where the total amount of exposure to uplift charges documented by LSEs exceeds the \$2.1 billion cap established in PURA § 39.652(4).¹⁷ This issue is embedded in the first half of PURA § 39.653(b)(3), which references “the process for remitting the proceeds of the financing.” Because these two issues are expressly identified as items

¹² Application N at 012-13.

¹³ PURA § 39.653(d).

¹⁴ PURA § 39.653(b)(3).

¹⁵ Order Requesting Briefing at 2 (Jul. 21, 2021).

¹⁶ *See also*, Direct Testimony of Kenan Ögleman at 040 (Jul. 16, 2021).

¹⁷ Options for addressing this contingency could include limiting the amount financing each LSE may receive, creating a system for prioritizing requests, or devising an allocation methodology.

that must be addressed in the Debt Obligation Order, Staff recommends that they must be decided in this proceeding and described in the Debt Obligation Order.

A. Timeline for parallel docket

Both of the issues to be decided in the instant docket—how to document exposure and how to prorate or otherwise determine the amount of financing available to an LSE should the total amount of exposure documented exceed \$2.1 billion—impact the timeline for processing the parallel proceeding. To give LSEs and other eligible entities time to make a filing opting out or providing documentation of their exposure, Staff recommends opening the parallel docket now¹⁸ but establishing a deadline for these filings that is 30 days after the date the Commission issues the Debt Obligation Order in this proceeding.

In addition, Staff proposes that ERCOT complete its review of all filings documenting exposure no later than 75 days after the date the Commission issues the Debt Obligation Order. The scope of ERCOT's review will be limited to confirmation that the procedures established by the Commission have been followed by the LSE, and that the documentation required by the Commission has been provided by the LSE. ERCOT will not perform a verification of the cost details provided by each LSE. On or about December 30, 2021, ERCOT will make a filing stating the total amount to be financed, i.e., the total amount of LSE exposure documented through the filings received.

B. Process for opting out

All entities eligible to opt out may begin doing so once the parallel docket is opened. Staff recommends that ERCOT send a Market Notice regarding the proceeding, including the docket number, to all market participants. For the purposes of PURA § 39.653(d), an entity electing to opt out is deemed to have paid in full all invoices owed during the period of emergency if the entity is not on the short-pay list developed by ERCOT for this period. A municipally owned utility, electric cooperative, or river authority electing to opt out must file an affirmative statement that it is electing to opt out. A REP that has the same corporate parent as each of the REP's customers and a REP that is an affiliate of each of the REP's customers must submit an affirmative statement

¹⁸ Opening the docket now will allow those entities wishing to opt out immediately to submit their filing and will allow ERCOT to send an initial Market Notice regarding opt outs well in advance of the deadline for opting out and additional reminders as needed.

that it is electing to opt out along with documentation substantiating the required corporate relationships between the REP and its customers.

Because ERCOT does not maintain information at the customer level, a transmission-voltage customer that is served by a REP must notify its REP, and not the Commission, that it is electing to opt out. To ensure that each transmission-voltage customer is informed of the right to opt out, each REP must notify these customers in writing. If a customer does not respond with a statement affirmatively opting out, then the REP must assume that the customer has elected to opt out.

As part of a REP's documentation of exposure, the REP will include a list of transmission-voltage customers that have elected to opt out. The list must include each customer's ESIID and the contact name, address, and description of the premise corresponding to the ESIID; the calculation of the REP's exposure must exclude any exposure associated with the customers on the list. Staff believes that embedding the opt out process for transmission-voltage customers into the REP's documentation of its exposure in the manner proposed will eliminate the possibility that transmission-voltage customers will inadvertently miss the opportunity to opt out.

In summary, Staff recommends opening a parallel proceeding immediately to serve as the clearinghouse for filings from entities electing to opt out under PURA § 39.653(d) and filings from LSEs submitting documentation of their exposure under PURA § 39.653(b)(3) for the purposes of receiving proceeds from the financing.

V. CONCLUSION

Staff respectfully requests the entry of an order finding ERCOT's application and notice sufficient, granting ERCOT's request for a good cause exception to ERCOT Nodal Protocol § 1.3.1.1(j), and approving the recommendation to open a parallel proceeding for the processing of opt out requests and applications documenting LSE exposure.

Dated: July 27, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on July 27, 2021 in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ R. Floyd Walker

R. Floyd Walker