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**PUC 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,  
FOR AN ORDER INITIATING A  
PARALLEL DOCKET, AND FOR A  
GOOD CAUSE EXCEPTION**

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**PUBLIC UTILITY COMMISSION OF  
TEXAS**

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

TXU Energy Retail Company LLC (“TXU Energy”), Ambit Texas, LLC (“Ambit”), Luminant ET Services Company LLC (“ETS”), TriEagle Energy LP (“TriEagle”), and Value Based Brands LLC dba 4Change Energy, Express Energy, and Veteran Energy (“VBB”) (collectively, the “TXU LSEs”) file this Response in the above-referenced proceeding pursuant to Section V of Order No. 1, to respond to Commission Staff’s recommendations regarding a parallel proceeding. Section V of Order No. 1 requires that any party’s response to Commission Staff’s recommendation be filed by July 30, 2021. This Response is timely filed.

**I. SUMMARY OF STAFF’S RECOMMENDATION**

On July 27, 2021, Commission Staff filed Commission Staff’s Recommendation on Sufficiency of the Application and Notice, Request for Good Cause Exception, and Request for Parallel Proceeding. Regarding ERCOT’s request for a parallel proceeding, the TXU LSEs read the filing to indicate that Commission Staff is making five primary recommendations concerning the scope of this proceeding as contrasted with the scope of a parallel proceeding:

1. The Commission should decide in this proceeding—not in a parallel proceeding—whether a load-serving entity’s (LSE’s) uplift exposure should be “netted” against its revenues or the revenues of an affiliate.
2. The Commission should decide in this proceeding—not in a parallel proceeding—what process will be used for each LSE to submit documentation to demonstrate its eligibility for

uplift balance bond proceeds.

3. The Commission should decide in this proceeding—not in a parallel proceeding—how to apportion or allocate the \$2.1 billion dollars of uplift balance bond proceeds if LSEs demonstrate aggregate eligibility exceeding that \$2.1 billion dollar cap on such proceeds.

4. The Commission should use a parallel proceeding—not this proceeding—as the mechanism for LSEs to submit documentation of exposure in accordance with the decisions the Commission makes regarding issues 1, 2, and 3.

5. The Commission should decide in a parallel proceeding—not in this proceeding—how an entity that is eligible to “opt-out” of paying uplift charges will inform the Commission and ERCOT of that decision or will be deemed to have made such an “opt-out” decision.

The following table summarizes those recommendations as the TXU LSEs understand Commission Staff's July 27, 2021 filing:

<b>Issue</b>	<b>Staff Recommends: This Proceeding</b>	<b>Staff Recommends: Parallel Proceeding</b>
1. Netting	√	
2. Process for Documenting Exposure	√	
3. Allocation of Proceeds	√	
4. Repository for Filing of Documents re: Exposure (Including Opt-Out Decisions)		√
5. Establish Opt-Out Process and Requirements		√

## II. THE TXU LSEs' RESPONSE

The TXU LSEs agree with Commission Staff's recommendation regarding issues 1, 2, 3, and 4 as the TXU LSEs understand those recommendations. House Bill No. 4492 mandates in new Texas Utilities Code Section 39.653(b)(3) that the financing order to be issued in this proceeding "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." That requirement encompasses not only specifying the process by which LSEs are to submit documentation of exposure (i.e., issue 2), but also how such "exposure" is determined and "the process for remitting the proceeds of the financing to load-serving entities who were exposed."

In order to determine an LSE's "exposure," as Commission Staff has recognized, the Commission must decide the "netting" question. Thus, Commission Staff has appropriately included issue 1 ("Netting") in the list of issues it recommends be determined in this proceeding.

And, to determine "the process for remitting the proceeds of the financing to load-serving entities who were exposed," the Commission must decide a proration and allocation mechanism if the total amount of all LSEs' exposure for uplift costs (i.e., aggregate market exposure) exceeds the \$2.1 billion cap on bond proceeds established by Texas Utilities Code Section 39.652(4). Thus, Commission Staff has appropriately included issue 3 ("Allocation of Proceeds") in the list of issues it recommends be determined in this proceeding.

The TXU LSEs also agree with Commission Staff that a parallel proceeding—not this proceeding—should be initiated to be the repository in which LSEs file documentation of their individual exposure. TXU LSEs also do not oppose using that parallel proceeding as the repository for conducting the one-time opt-out process. Thus, issue 4 ("Repository for Filing of Documents re: Exposure (Including Opt-Out Decisions)") appropriately should be included not here, but in a parallel proceeding separate from this proceeding.

However, regarding establishment of the opt-out process and requirements, the TXU LSEs believe that decisions about who can opt-out and associated requirements will have important impacts on each eligible entity's decision whether or not to opt-out and will affect

allocation determinations, which could in turn impact additional opt-out decisions. Each entity that opts out will be removed from the list of entities that might have qualified to receive bond proceeds, but also shrinks the pool of entities obligated to cover the financing costs. With respect to transmission-level customer opt-outs, additional determinations must be made to implement the statute, such as what constitutes “paying in full all invoices owed for usage during the period of emergency” and whether the statute requires that such customers must have been contractually exposed to the uplift costs in order to opt-out. Also, would such customers that were contractually exposed to the uplift costs be disadvantaged by a default opt-out assumption? The Commission’s decision on other issues, such as netting, could directly impact a transmission-level customer’s opt-out calculus. These policy and procedural questions could directly impact notice and documentation requirements for REPs. Consequently, to allow for a robust evaluation of the inter-related allocation issue and transmission-level opt-out issues, TXU LSEs recommend that the Commission determine in this proceeding, simultaneously with deciding the allocation issue, the process and requirements that will govern such opt-out decisions.

Accordingly, the TXU LSEs’ recommendations may be summarized thusly:


<b>Issue</b>	<b>TXU LSEs Recommend: This Proceeding</b>	<b>TXU LSEs Recommend: Parallel Proceeding</b>
1. Netting	√	
2. Process for Documenting Exposure	√	
3. Allocation of Proceeds	√	
4. Repository for Filing of Documents re: Exposure (Including Opt-Out Decisions)		√
5. Establish Opt-Out Process and Requirements	√	

### III. REQUEST FOR RELIEF

For the reasons stated in this Response, the TXU LSEs respectfully ask the Commission to include in its decision in this proceeding each of the following issues:

1. Whether "netting" will be used and if so, how;
2. The process for documenting uplift exposure;
3. The method for allocation of bond proceeds if total exposure exceeds the cap; and
4. The opt-out process and requirements.

**Respectfully submitted,**

By:   
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